[JOINT COMMITTEE PRINT]

EXPLANATION OF H.R. 3904

(As reported by the Committee on Education and Labor)

RELATING TO

MULTIEMPLOYER PENSION PLAN AMENDMENTS

SCHEDULED FOR A MARKUP

BY THE

COMMITTEE ON WAYS AND MEANS

ON MARCH 12, 1980

PREPARED FOR THE USE OF THE

COMMITTEE ON WAYS AND MEANS

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

MARCH 11, 1980

U.S. GOVERNMENT PRINTING OFFICE

58-585 O WASHINGTON : 1980 JCS-9-80

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INTRODUCTION

The Committee on Ways and Means held a public hearing on H.R. 3904 (relating to multiemployer pension plans) on February 19, 1980. The bill has been jointly referred to the Committee on Ways and Means and the Committee on Education and Labor. H.R. 3904 was ordered reported with amendments by the Committee on Education and Labor on January 30, 1980, after being marked up by the Subcommittee on Labor-Management Relations on December 13, 1979.

In connection with the Ways and Means Committee markup of the bill scheduled for March 12, 1980, the staff of the Joint Committee on Taxation has prepared this pamphlet, providing an explanation of the bill as amended by the Education and Labor Committee. The first part of the pamphlet is an overview. The second part is a summary of the bill. This is followed by a more detailed explanation of the provisions of the bill, including an indication of present law treatment as well as estimated revenue effects.

In addition, a summary of testimony before the Ways and Means Committee is provided in the Appendix. This includes the public testimony as well as statements submitted for the record.

I. OVERVIEW

The Employee Retirement Income Security Act of 1974 (ERISA) established a program of insurance for employee benefits under most tax-qualified, private, domestic, defined benefit pension plans.[1] The program is administered by the Pension Benefit Guaranty Corporation (PBGC), a corporation within the Department of Labor. The Board of Directors of the PBGC consists of the Secretary of Labor (Chairman), the Secretary of the Treasury, and the Secretary of Commerce.

The PBGC maintains a trust fund and a revolving fund for insurance of benefits under terminated multiemployer defined benefit pension plans (multiemployer plans), as well as a trust fund and a revolving fund for insurance of benefits under other terminated defined benefit pension plans (usually referred to as "single-employer plans"). The PBGC is not "on budget" and the United States is not liable for debts of the PBGC.

The insurance program (referred to as "termination insurance") is funded by (1) premiums paid by plans, (2) assets of plans that have terminated with insufficient funds to provide insured benefits, (3) payments by employers who maintained plans which terminated with insufficient funds to provide insured benefits, and (4) earnings on investments. The funds maintained for multiemployer plans are the sole source of guaranteed benefits under terminated multiemployer plans. Similarly, the funds maintained for single-employer plans are the sole source of guaranteed benefits under single-employer plans.

Under present law, the guarantee by the PBGC of benefits under a multiemployer plan is within the discretion of the PBGC until April 30, 1980. Beginning on May 1, 1980, the guarantee of these benefits becomes mandatory.

The bill (H.R. 3904), as approved by the House Committee on Education and Labor, would provide a new definition for the term "multiemployer plan," impose liability for unfunded benefits upon employers who withdraw from a multiemployer plan and allow a deduction for payments of the liability, permit multiemployer plans in financial distress to reduce benefits for workers, retirees, and beneficiaries, impose additional funding requirements for multiemployer plans, provide new rules for mergers and transfers of assets involving multiemployer plans, authorize the PBGC to provide financial assistance to insolvent multiemployer plans, and provide new enforcement powers for the PBGC. In addition, the bill would increase premiums payable to the PBGC by multiemployer plans, make insurance of basic benefits under multiemployer plans by the PBGC mandatory but modify the level of plan benefits guaranteed by the PBGC, and modify the rules relating to employer liability to the PBGC and the plan in the event of the insolvency of or termination of a multiemployer plan. The amendments made by the bill generally would be effective upon enactment.

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[1] See ERISA sec. 4021. A defined benefit pension plan provides a specified level of benefits for participants (e.g., the Federal Civil Service Retirement plan). A church pension is generally exempt from the insurance program unless the plan has elected to be subject to ERISA standards. Also, plans of certain professional service employers are excluded from the program.

II. SUMMARY OF THE BILL

A. Title I of the Bill Relating to Amendments to Title IV of ERISA

1. Findings and declaration of policy

The statement of policy included in ERISA does not specifically provide that ERISA is for the purpose of encouraging the growth and maintenance of multiemployer plans.

The policy of the bill, as declared therein, is to make specified changes in the pension rules applicable to multiemployer plans (1) to protect the interests of participants and beneficiaries in financially distressed multiemployer plans, and (2) to encourage the growth and maintenance of multiemployer plans.

2. Definition of multiemployer plan

Under present law, a plan is a multiemployer plan for a year if it is maintained by more than one unrelated employer under a collective bargaining agreement, if the plan meets Labor Department requirements, and if (1) no employer makes more than 50 percent of the aggregate employer contributions for the year (unless a special rule is satisfied), and (2) benefits for a participant's service while the employer maintains the plan are payable without regard to the cessation of plan contributions by the employer. All corporations that are members of a controlled group are treated as a single employer.

Under the bill, the test relating to proportionate employer contributions (the 50-percent test) and the test relating to continuity of benefits in the event of a cessation of employer contributions would be deleted. The bill would provide that all trades and businesses (whether or not incorporated) under common control would be considered a single employer for purposes of counting the number of employers maintaining a plan (this rule is the same as the rule for aggregation of employers generally applicable under ERISA and related Code provisions). In addition the bill would provide that a plan continues to be a multiemployer plan after its termination if it was a multiemployer plan for the plan year ending before its termination date.

A plan which is a single-employer plan under present law, and which would otherwise be a multiemployer plan under the bill, would generally be permitted to elect to retain its single-employer status. The provision would apply upon enactment except that the present law definition would be continued for plan years beginning before enactment.

3. Employer withdrawal liability, etc.

a. Withdrawal liability

Under present law, the liability of an employer under a multiemployer plan ends when the employer withdraws from the plan unless, within 5 years after the withdrawal the plan terminates with insuffi-

cient assets to provide benefits at the level guaranteed by the PBGC. In the event of such a termination each employer who maintained the plan during the 5-year period preceding the termination is liable to the PBGC for a share of the insufficiency. An employer's liability is limited, however to 30 percent of its net worth.

Under the bill, an employer who totally or partially withdraws from a multiemployer pension plan would generally be liable for a portion of the plan's unfunded benefit obligations determined as of the time of withdrawal. Special provisions are included which relieve employers in the building and construction or entertainment industry from withdrawal liability in specified circumstances. A *de minimis* rule is also provided. The bill has a basic method for computing withdrawal liability as well as several alternative methods which a plan could adopt. Under the basic method, a plan's unfunded benefit obligations accumulated in years ending before February 28, 1979, would be allocated to the employers who maintained the plan before that date and continued to maintain the plan after February 27, 1979 until withdrawal. The share of these unfunded obligations for which an employer would be liable would generally depend upon the employer's proportionate share of contributions to the plan by all employers during the five plan years preceding February 28, 1979. A change in unfunded obligations for a year after February 27, 1979, would generally be allocated to withdrawing employers in proportion to their plan contributions for the five plan years preceding the year of the change.

b. Merger or transfer of plan assets or liabilities

Under present law the rules relating to the merger or consolidation of pension plans, or the transfer of assets or liabilities between plans apply to multiemployer plans only to the extent prescribed by the PGBC. To date the PBGC has not prescribed such rules.

The bill would require that a merger, etc., involving a multiemployer plan meet certain standards designed to protect participant's benefits.

c. Plan reorganization

Under present law, (1) participant's benefits under financially troubled multiemployer pension plans generally may not be reduced by plan amendment, and (2) financially troubled plans are generally subject to the same minimum funding standard as other plans.

Under the bill, certain financially troubled multiemployer pension plans would be considered in a status of "reorganization." Once a plan enters reorganization, (1) benefits under the plan, including benefits of retirees, could be reduced to the level of benefits provided by the plan 5 years earlier in certain circumstances, and (2) a minimum contribution requirement, which could require greater employer contributions would generally apply to the plan. In the case of a plan which is considered overburdened because it has a high proportion of retirees, the additional funding required under the minimum contribution requirement would be reduced by an overburden credit. The benefits of retirees could not be reduced by a greater proportion than the benefits of active employees. The bill requires that employees, employers, and other interested parties be notified that benefits may be reduced and contributions may be required to be increased to avoid excise taxes.

d. Financial assistance

Under present law, financial assistance from the PBGC is available to a multiemployer pension plan only upon plan termination and, until May 1, 1980, only at the discretion of the PBGC.

Under the bill, the PBGC would be required to provide financial assistance to insolvent multiemployer plans which have not terminated where the assistance is needed to enable the plans to pay basic benefits.

e. Enforcement

The bill includes provisions for appropriate legal relief, equitable relief or both for parties affected by the bill's requirements. In addition, the bill would provide a civil penalty of up to $100 per day for failure to provide any notice required under the bill.

4. Termination of multiemployer plans

Under present law, the time at which a plan terminates for purposes of termination insurance, is generally determined by the responsible officials of the plan. However, ERISA provides a procedure under which the PBGC may institute proceedings to terminate a plan. If a multiemployer plan terminates with insufficient assets to provide benefits at the level guaranteed by the PBGC, the employers who contributed to the plan during the five years preceding termination are each liable to the PBGC for a proportionate share of the insufficiency. An employer's liability is limited to 30 percent of its net worth .

The bill would provide new rules for determining the date on which a multiemployer plan terminates.

In the case of a terminated plan from which all employers have not withdrawn, the bill would require that employers who continue to maintain the plan continue their plan contributions at the highest rate applicable during the last two plan years ending on or before the date of termination. A reduction of contributions would be permitted, with approval of the PBGC, where the plan is becoming fully funded.

The bill would authorize the PBGC to prescribe reporting requirements and rules for the administration of terminated multiemployer plans where such reports or rules are needed to protect the interests of plan participants or to protect the PBGC against unreasonable losses.

5. Termination insurance premiums

Under present law, a multiemployer plan which is subject to the termination insurnace program is required to pay annual premiums to the PBGC at the rate of $.50 per plan participant. The premium rate may be changed by the PBGC with the approval of the Congress by a concurrent resolution (such a resolution is required to be referred to the tax committees and labor committees of the House of Representatives and of the Senate). Also, the PBGC is authorized to set premium rates for insurance of nonbasic benefits and to develop a risk-related premium schedule.

The bill provides that the annual per-participant premium for multiemployer plans would increase from the present $.50 rate to $2.60 over a 9-year period. Under the bill, the premium would not apply more than once per plan year where an individual participates in more than

one plan maintained by the same employer. Also, the bill continues the authority of the PBGC to prescribe regulations under which the premium rate for multiemployer plans will not apply to the same participant in a multiemployer plan more than once for any plan year.

In addition, the bill modifies the authority of the PBGC to establish alternative premium rates and bases for basic benefits (subject to Congressional approval) by deleting specific restrictions on the computa-
tiemployer plans would increase from the present $.50 rate to $2.60 over
tion of such premiums. Basic benefits consist of retirement benefits, with certain exclusions and limitations.

With respect to nonbasic benefits guaranteed under a multiemployer plan, the bill provides that premium rates prescribed by the PBGC may reflect any reasonable consideration that the PBGC determines to be relevant. Nonbasic benefits would be required to be guaranteed by the PBGC only at the election of a plan.

6. Multiemployer guarantees

Since ERISA was enacted in 1974, the guarantee of employee benefits under terminated multiemployer plans has been within the discretion of the PBGC, subject to statutory standards. The guarantee of benefits under single-employer plans is not discretionary. The guarantees, which are subject to the same maximum limits under multiemployer and single-employer plans, extend only to basic benefits (generally, vested retirement benefits), determined before plan termination. Basic benefits are insured by the PBGC to the extent of the lesser of $750, adjusted for inflation since 1974 ($1,159.09 for 1980) or a participant's average high 5-year compensation. The insurance of benefits is generally phased-in over a five-year period.

Multiemployer plans pay an annual per-participant premium of $.50 to the PBGC. The insurance is not voluntary and is provided whether or not premiums are paid.

The bill would eliminate the PBGC guarantee of benefit levels in effect less than 5 years before a reduction of benefits by a plan in reorganization or termination of a multiemployer plan. Also, benefits eliminated or cancelled because of the cessation of an employer's contributions to the plan would not be guaranteed by the PBGC.

Under the bill, the first $5 of monthly basic benefits earned per year of a participant's service would generally be fully guaranteed and 70 percent of monthly basic benefits in excess of $5 (up to $15) would generally be guaranteed. The percentage for excess benefits would generally be reduced to 60 percent under plans which did not meet specified funding requirements. The guarantees would apply in the event of the insolvency of a multiemployer plan. As under present law, the bill would not extend guarantees to plan benefits of certain substantial owners of an employer who maintains a terminated plan.

The bill continues the requirement of present law that PBGC premium increases must be approved by the Congress. However, the bill adds a new procedure for periodic Congressional review of premium and guarantee levels. Under the new procedure, if increased premiums are needed to maintain guarantee levels, and the increased premiums are not approved, guarantee levels would be reduced. Also, if premiums are found to be in excess of the amount required to maintain guar-

antee levels, premiums could be reduced or guarantee levels could be increased with Congressional approval.

The bill would authorize the PBGC to guarantee non-basic benefits subject to terms and conditions imposed by the PBGC. Non-basic benefits under a plan would be guaranteed only if the plan elected such coverage.

The bill would limit the aggregate benefit provided by the PBGC with respect to any participant to the same level provided by present law except that, under PBGC regulations, financial assistance provided by the PBGC to a plan would be considered the provision of guaranteed benefits.

7. Annual report of plan administrator

Under ERISA, a plan administrator is required to report the occurrence of specified reportable events to the PBGC. Also, the plan administrator of a plan to which more than one employer contributes is required to notify each substantial employer annually that it is a substantial employer. In addition, reports are required to be filed with the payment of premiums (Form PBGC–1).

The bill would add a requirement that the annual report of a plan administrator, with respect to a plan subject to termination insurance, include such information with respect to the plan as the PBGC determines is necessary for enforcement purposes and that is required by regulations. The bill provides that the information required may include (1) a statement by the plan's enrolled actuary relating to the value of plan assets and liabilities, and (2) a statement by the plan administrator relating to withdrawal liability.

8. Contingent employer liability insurance

ERISA provides for a program designed to permit an employer to insure against the contingent employer liability (up to 30 percent of the employer's worth) arising out of the termination of a plan with insufficient assets to provide benefits at the level guaranteed by the PBGC. Under ERISA, the contingent employer liability insurance (CELI) may be developed by the PBGC in conjunction with private insurors. The PBGC is authorized to provide premium rates and collect premiums under the CELI program. The CELI program has not been implemented by the PBGC.

The bill would repeal the contingent employer liability insurance provisions of ERISA for multiemployer plans and single-employer plans.

B. Titles II and III of the Bill Relating to Amendments to the Code and to Title I of ERISA

1. Minimum funding requirements

Under present law, a pension plan is required to meet a minimum funding standard. The minimum funding standard for multiemployer pension plans under present law is generally less stringent than the standard applicable to single-employer pension plans.

Under the bill, the funding requirements applicable to multiemployer pension plans would generally be conformed to those applicable to single-employer pension plans under present law. (Of course, the minimum contribution requirement imposed under the bill could increase the funding requirements of a multiemployer plan.)

2. Excise taxes

Under present law, an employer who maintains a plan to which the ERISA minimum funding standard applies is subject to a two-tier annual nondeductible excise tax on any accumulated funding deficiency under the plan. (An accumulated funding deficiency is the amount by which plan contributions fall short of the contributions required under the minimum funding standard of ERISA.) The initial tax is 5 percent of the deficiency. If the deficiency is not corrected within a correction period, an additional excise tax equal to 100 percent of the deficiency is imposed. Present law provides administrative discretion to reduce funding requirements (within limits) in the event employers are experiencing temporary financial distress.

Before issuing a notice of deficiency under this provision, the Internal Revenue Service is required to notify the Secretary of Labor and afford the Secretary of Labor an opportunity to (1) require the responsible employer to eliminate the deficiency and (2) to comment on the imposition of the tax.

The bill would conform the penalty excise tax provisions relating to the ERISA funding standard to the plan reorganization provisions of the bill by changing the accumulated funding deficiency of a plan in reorganization (the amount to which the excise tax applies) to the reorganization deficiency computed under the bill. The bill would also provide that in the case of a multiemployer plan in reorganization, the notice issued by the Internal Revenue Service to the Secretary of Labor with respect to a notice of deficiency for a tax on an accumulated funding deficiency, and the opportunity to comment on the imposition of the tax, would be provided to the PBGC.

3. Deductibility of employer liability payments

Under present law, an employer is allowed a deduction for a contribution to a qualified pension plan for its employees. The deduction is generally allowed (within limits) in the taxable year for which the contribution is made. Payments of employer liability under the termination insurance program are treated as employer contributions.

The bill would allow a deduction for amounts paid by a taxpayer under the employer liability provisions of the termination insurance program without regard to the usual limitations on employer deductions for contributions to a defined benefit pension plan. Special rules are provided which would allow a taxpayer a deduction for employer liability payments where the taxpayer's liability arises out of the liability of an employer who is a member of the same controlled group of companies that includes the taxpayer.

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4. Minimum vesting requirements

Under present law, pension plans are required to meet certain minimum vesting standards designed to assure that, with very limited exceptions, where vesting under a plan depends upon the extent of an employee's service with an employer, all of the employee's service with that employer is taken into account for vesting purposes.

Under the bill, years of service with an employer completed by an employee after that employer has withdrawn from a multiemployer plan would not be required to be taken into account in determining the employee's vesting under the plan. Also, years of service completed by an employee before the employer was required to contribute to the plan could be disregarded if the employer later withdrew from the plan.

III. PRESENT LAW AND EXPLANATION OF PROVISIONS

A. Findings and Declaration of Policy (Sec. 3 of the Bill)

The statement of policy included in ERISA does not specifically provide that ERISA is for the purpose of encouraging the growth and maintenance of multiemployer plans.

The policy of the bill, as declared therein, is to make specified changes in the pension rules applicable to multiemployer plans (1) to protect the interests of participants and beneficiaries in financially distressed multiemployer plans, and (2) to encourage the growth and maintenance of multiemployer plans.

B. Definition of Multiemployer Plan (Secs. 108(d), 206, and 302 of the Bill and Sec. 414(f) of the Code, and Sec. 3(37) of ERISA)

Present law

Under present law, a plan is a multiemployer plan for a year if (1) more than one employer is required to contribute to the plan, (2) the plan is maintained pursuant to a collective bargaining agreement between employee representatives and more than one employer, (3) the amount of contributions made under the plan for the year by each employer is less than 50 percent of the aggregate employer contributions for that year (unless a special rule is satisfied), (4) benefits under the plan are payable to each participant without regard to the cessation of contributions by the employer of the participant except to the extent the benefits accrued because of service with the employer before the employer was required to contribute to the plan, and (5) the plan satisfies other requirements imposed by Labor Department regulations.[1]

All corporations, which are members of a controlled group of corporations, are treated as a single employer in determining the status of a plan as a multiemployer plan for purposes of the tax law.

Explanation of provisions

Under the bill, the test relating to proportionate employer contributions (the 50-percent test) and the test relating to continuity of benefits in the event of a cessation of employer contributions, would be deleted. The bill would provide that all trades and businesses (whether or not incorporated) under common control would be considered a single employer for purposes of testing the status of a plan as a multiemployer plan. In addition, the bill would provide that a plan continues to be a multiemployer plan after its termination if it was a multiemployer plan for the plan year ending before its termination date.

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[1] See DOL Regs. § 2510. 3–37.

A plan which is not a multiemployer plan under present law and has paid PBGC premiums for at least 3 years as a single-employer plan would be permitted to elect to retain its status as a single-employer plan where the plan would otherwise be a multiemployer plan under the bill.

Effective date

The provision would apply upon enactment except that the present law definition would be continued for plan years beginning before enactment.

C. Employer Withdrawal Liability, Etc. (Secs. 104 and 108 of the Bill, Secs. 411 and 412 of the Code, and Secs. 4201–4203, 4221–4224, 4241–4245, 4261, 4281, 4301 and 4302 of ERISA)

Present law

Employer liability

Under present law, if an employer maintained or contributed to a multiemployer plan (or other plan to which more than one employer contributes) during the 5-year period preceding the termination of the plan, and if the plan terminates with insufficient assets to provide benefits at the level guaranteed by the PBGC, the employer is liable to the PBGC for a share of the insufficiency. The insufficiency is generally allocated to employers on the basis of each employer's proportionate share of the total contributions required under the plan during the 5-year period. The liability of any particular employer, however, is limited to 30 percent of that employer's net worth (before taking the liability to the PBGC into account).[1] In addition, if a "substantial employer" withdraws from a plan to which more than one employer contributes, the employer is required to pay to the PBGC (or to post a bond for payment of) an amount equal to the employer's share of the insufficiency which would arise if the plan were to terminate. The payment is returned to the employer (or the bond is cancelled) if the plan does not terminate within 5 years after the withdrawal. Under present law, an employer is a substantial employer for a plan year if the employer's contributions during (1) each of the two preceding plan years, or (2) both the second and third preceding plan years were at least equal to 10 percent of the total contributions paid to the plan for each of such years.[2]

In the case of a plan to which only one employer contributes, liability for an insufficiency is allocated in full to that employer, subject to the "30 percent of net worth" limit. The substantial employer rules do not apply in such a case.[3]

Mergers, transfers, etc.

Under the Code and under the nontax provisions of ERISA, a plan is not permitted to merge or consolidate with, or transfer its assets or liabilities to, another plan unless certain conditions are met. The applicable conditions require that the benefits which each participant in the plan would receive if the plan were to terminate immediately after the merger, etc., will not be less than the benefits the participant would receive under the merged plan if that plan terminated immediately before the merger, etc.

In the case of a multiemployer plan, the merger, etc. rule is applicable only to the extent determined by the PBGC. Thus far, the

[1] See ERISA secs. 4062 and 4064.
[2] See ERISA secs. 4001(a) (2) and 4063.
[3] See ERISA sec. 4062.

PBGC has not prescribed rules for determining the extent to which the merger, etc., rules are applicable to multiemployer plans.

Explanation of provisions

In general

Under the bill, an employer who withdraws from a multiemployer plan generally would be liable to the plan for the portion of the plan's unfunded benefit obligations (if any) assigned to the employer. The bill would provide four alternative methods, any of which a plan could consistently use to determine this liability. In addition, a plan could devise its own method of computation subject to the approval of the PBGC.

1. Definition of withdrawal

a. Complete withdrawal

The bill would treat an employer as withdrawing from a multiemployer plan when the employer (1) permanently ceases to have an obligation to contribute under the plan, or (2) permanently ceases all covered operations under the plan. A withdrawal would not occur, however, where an employer ceases to exist by reason of a change in form or structure, as long as the employer is replaced by a successor employer and there is no interruption in the employer's contributions to the plan or the employer's obligations under the plan. In addition, a withdrawal would not take place merely because an employer suspends making plan contributions during a labor dispute which involves its employees.

Generally if a withdrawal occurs, the date of the withdrawal would be considered to be the last day of the plan year in which the employer permanently ceased to have an obligation to contribute under the plan or permanently ceased all covered operations under the plan. Under special circumstances the date of the withdrawal of an employer who has an obligation to contribute under a plan for work performed in the building and construction industry or in the entertainment industry would be the date on which the employers obligation to contribute under the plan ceased.

With respect to an employer who has withdrawn from a multiemployer plan and who subsequently resumes covered operations under the plan or renews an obligation to contribute to the plan, the PBGC would have the power to prescribe regulations for the plan to reduce or waive withdrawal liability. In addition, the PBGC could prescribe regulations or a procedure by which the plan could be amended to provide rules for the reduction or waiver or withdrawal liability with respect to such an employer.

b. Partial withdrawal

Under the bill, an employer would become subject to withdrawal liability in some cases in the event of a partial withdrawal; that is, where the employer neither completely ceases to have an obligation to contribute under the plan nor permanently ceases all covered operations under the plan. Under the bill, a partial withdrawal would arise because of the occurrence of any of several specified events which could significantly decrease the employer's obligations for contribu-

tions under the plan. Under the bill, a partial withdrawal would occur—

(1) if the number of contribution base units (e.g., hours worked) with respect to which the employer is required to contribute under the plan for each of three consecutive plan years is less than 40 percent of the number of contribution base units with respect to which the employer was obligated to contribute under the plan for any one of the five plan years preceding the three-year period;

(2) if, because the employer ceased substantially all of its covered operations at one or more facilities, the number of contribution base units with respect to which the employer is required to contribute under the plan for the plan year is less than 75 percent of the number of contribution base units with respect to which the employer is required to contribute under the plan for any of the preceding five plan years; or

(3) if an employer who is required to contribute to a plan under several collective bargaining agreements ceases to have an obligation to contribute under at least one but not all of the agreements.

The liability which an employer incurs in the case of a partial withdrawal is to be a pro rata portion of the liability which the employer would incur in the event of a complete withdrawal on the same date. While a plan, subject to PBGC approval, would generally be permitted to devise its own formula for determining withdrawal liability, the bill would provide that there would be no obligation for withdrawal liability in the case of a partial withdrawal of an employer who is responsible for less than two percent of the contributions to the plan in the five-year period preceding the withdrawal, except where the plan specifically provides for liability in such a case.

Generally, whenever an event giving rise to a partial withdrawal occurs, the date of the partial withdrawal would be the last day of the plan year in which the event takes place. If a partial withdrawal takes place under the 3-year/40-percent rule described above, the first plan year of the 3-year period would be considered the year in which the employer partially withdrew.

The bill provides rules under which an employer will have no further liability on account of partial withdrawal or will have a reduction in that liability where the number of the employer's contribution base units later increases.

c. Construction etc., industry exception

In the case of certain plans under which an employer has an obligation to contribute for work performed in the building and construction industry, a withdrawal is considered to take place only if an employer ceases to have an obligation to contribute under the plan, and (1) continues to perform work in the geographic area covered by the employer's bargaining agreement, of the type for which contributions were previously required, or (2) resumes work in the geographic area within five years after the date the employer's obligation to contribute under the plan ceased without renewing such obligation, if,

when the employer resumes work, (i) other employers have an obligation to contribute under the plan, and (ii) the plan would have permitted the employer to contribute.

An employer contributing to a plan is subject to these special rules only if substantially all of the employees for whom the employer has an obligation to contribute perform work in the building and construction industry, and (1) the plan covers primarily employees in the building and construction industry, or (2) the plan is amended to provide that the rules apply to employers with an obligation to contribute for work performed in the building and construction industry. Similar rules would apply to multiemployer plans in the entertainment industry.

The partial withdrawal rules apply to an employer subject to the special building and construction industry rules only where the employer so substantially reduces its involvement with a plan that the employer's continuing obligation to make contributions is for only a token portion of its work of the type for which contributions to the plan are required in the craft and area jurisdiction of the relevant collective bargaining agreement.

d. De minimis rule

In any case where the withdrawal liability of an employer would be less than the greater of (a) $25,000, or (b) 0.75 percent of the plan's unfunded benefit obligations determined as of the close of the plan year immediately preceding the withdrawal, the bill would not impose any withdrawal liability on the employer. A plan could provide, however, for a lower *de minimus* amount or for no *de minimis* amount.

The *de minimus* rules under the bill would not apply to an employer who withdraws from a plan in a plan year in which substantially all employers withdraw, or to an employer who withdraws under an agreement or arrangement under which substantially all employers withdraw from the plan in one or more plan years. Where substantially all employers withdraw from a plan within a period of three plan years, it would be presumed that such an agreement or arrangement exists unless the contrary is shown by a preponderance of the evidence.

e. Exception for new employers

The bill would provide a rule under which an employer first entering a plan would not be subject to withdrawal liability, either in the case of a complete withdrawal or a partial withdrawal, if certain conditions are met. The applicable conditions are as follows:

a. The employer was first obligated to make plan contributions after the date of enactment of the bill;

b. The employer was not required to make plan contributions for more than the lesser of (1) six consecutive plan years preceding the date of withdrawal or (2) the number of years required for vesting under the plan;

c. for each plan year for which contributions by the employer were required, the required contributions were less than 2% of all employer contributions to the plan for the plan year;

d. the plan does not cover primarily employees in the building and construction industry; and

e. the employer did not previously have the benefits of this exception with respect to the plan.

In addition, the exception would apply only if (1) the plan is amended to provide for its application; (2) the plan provides that benefits of participants accrued on the basis of service before the employer was required to contribute to the plan will not be payable if the employer ceases contributions to the plan and (3) the ratio of plan assets to benefit payments during the plan year preceding the first plan year for which the employer was required to make plan contributions was at least 8 to 1.

2. *Computation of withdrawal liability*

a. Basic method

The basic method for computing withdrawal liability would draw a distinction between employers who contributed to a plan for a plan year ending before February 28, 1979, and employers who did not contribute to the plan for such a year. As to employers which contributed to a plan for such a year the bill would compute withdrawal liability (1) with respect to the unfunded benefit obligations [4] of the plan attributable to those years, as well as (2) with respect to changes in the unfunded benefit obligations of the plan for plan years ending on or after February 28, 1979, in which the employer was required to contribute to the plan. In the case of an employer who was not required to contribute to the plan for a plan year ending before February 28, 1979, the employer's withdrawal liability would be computed solely with reference to changes in the unfunded benefit obligations under the plan in plan years ending on or after February 28, 1979, in which the employer was required to contribute to the plan. The basic method would apply unless a plan adopted one of the alternative methods.

In particular, withdrawal liability under the basic method would be divided into two parts, as follows:

(1) liability with respect to changes in benefit obligations for plan years ending on or after February 28, 1979, in which the employer was obligated to contribute under the plan; and

(2) liability with respect to benefit obligations for plan years ending before February 28, 1979.

In the case of an employer who was not required to contribute to a plan until the first plan year ending on or after February 28, 1979, the second component of withdrawal liability would not apply.

The portion of an employer's withdrawal liability attributable to plan years ending after February 28, 1979, would be computed in several steps, as follows:

(1) The first step is to determine what is known as the "change in the plan's unfunded benefit obligations" for each plan year ending on or after February 28, 1979. Under the bill, this amount would be calculated for each plan year as the difference between (a) the unfunded benefit obligations as of the end of the plan year, and (b) the sum of (i) the unfunded benefit obligations on the last day of the last plan year ending before February 28, 1979, reduced by five percent for each succeeding plan year, and (ii) the sum of the unamortized amount of the change in unfunded bene-

[4] Generally, the term "unfunded benefit obligations" is intended to mean the plan's unfunded liability for vested retirement benefits (including early retirement benefits, Social Security supplements, and disability benefits).

fit obligations for each plan year ending on or after February 28, 1979, and preceding the plan year.

(2) The second step is to determine what is known as "the unamortized amount of the change in a plan's unfunded benefit obligations for a plan year". This is determined by reducing the change in a plan's unfunded benefit obligations for a plan year (determined under step (1)) by five percent for each succeeding plan year.

(3) The third step is to calculate the employer's "proportional share of the unamortized amount of the change in the unfunded benefit obligations" for each plan year involved. This is accomplished by multiplying the unamortized amount of the change for each plan year, determined as of the end of the plan year in which the employer withdraws from the plan, by a fraction. The numerator of the fraction is the sum of contributions which the employer was required to make to the plan for the year of the change and for the preceding four plan years. The denominator of the fraction is the sum of contributions which all employers made to the plan for the year of the change and for the preceding four plan years.

(4) The final step is to add up the employer's proportional share of the unamortized amount of the change in the plan's unfunded benefit obligations for each of the plan years. This total is the employer's proportional share of the unamortized amount of the change in the plan's unfunded benefit obligations for all plan years ending on or after February 28, 1979.

The portion of an employer's withdrawal liability with respect to plan years ending before February 28, 1979, would be determined by multiplying (1) the amount of the unfunded benefit obligations under the plan as of the last day of the last plan year ending before February 28, 1979, reduced by five percent for each succeeding plan year, by (2) a fraction. The numerator of the fraction is the sum of contributions which the employer was required to make to the plan for the last five plan years ending before February 28, 1979. The denominator of the fraction is the sum, for the same five plan years, of plan contributions made by all employers who (a) had an obligation to contribute under the plan for the first plan year ending on or after February 28, 1979, and (b) had not withdrawn from the plan before February 28, 1979.

The plan's unfunded benefit obligations may be increased by (1) the present value of an uncollectible withdrawal liability if the plan sponsor determines the withdrawal liability to be uncollectible, and (2) an amount equal to an employer's withdrawal liability if the plan sponsor determines that the employer is no longer liable for the withdrawal liability.

b. First alternative method

The first alternative method would also draw a distinction between employers who contributed to a plan for plan years ending before February 28, 1979, and employers who did not contribute to the plan for such years. As in the case of the basic method, only employers who contributed for years ending before February 28, 1979 would have

their withdrawal liability computed with reference to unfunded benefit obligations under the plan attributable to such years. Other employers would have their withdrawal liability computed solely with reference to the plan's unfunded benefit obligations attributable to plan years ending on or after February 28, 1979. However, unlike the basic method, under the first alternative method, an employer's withdrawal liability would be based on the aggregate change in unfunded benefit obligations with respect to all plan years ending on or after February 28, 1979, rather than on the change in unfunded benefit obligations for each separate plan year for which the employer was required to contribute to the plan.

In particular, the first component of withdrawal liability under the first alternative method would be obtained by multiplying (1) the plan's unfunded benefit obligations as of the end of the last plan year ending before February 28, 1979, reduced as if that amount were being amortized thereafter in level annual installments over 15 years, by (2) a fraction. The numerator of the fraction is the sum of the plan contributions required of the employer for the last plan year ending before February 28, 1979, and for the preceding four plan years. The denominator of the fraction is the sum of the contributions by included employers made for that period of five plan years. An employer is included if (1) the employer was required to contribute to the plan for the first plan year ending on or after February 28, 1979, and (2) the employer had not withdrawn from the plan before that date.

The second component of withdrawal liability under the first alternative method would be obtained by computing the excess of the plan's unfunded benefit obligations (as of the last day of the plan year in which the employer withdraws) over the sum of (1) the value on such date of all outstanding claims for withdrawal liability which can reasonably be expected to be collected and (2) the plan's unfunded benefit obligations as of the last day of the last plan year ending before February 28, 1979 (as reduced by 15-year amortization) and multiplying such excess by a fraction. The numerator of the fraction is the total amount required to be contributed by the employer for the last plan year ending before withdrawal and for the four preceding plan years. The denominator of the fraction is the total amount contributed by all employers for those five plan years, increased by employer contributions for earlier periods that are collected during the five plan years, and reduced by the contributions made by any employer who withdrew from the plan during any of the five plan years.

c. Second alternative method

The second alternative method for computing withdrawal liability would draw no distinction between employers who were required to contribute to a plan for plan years ending before February 28, 1979, and employers who were required to contribute only for plan years ending on or after February 28, 1979. Accordingly, employers in both categories would have their withdrawal liability computed with reference to all of a plan's unfunded benefit obligations.

Under this method, withdrawal liability would be determined by multiplying (1) the plan's unfunded benefit obligations as of the

end of the plan year of the withdrawal, reduced by the value of certain outstanding claims for withdrawal liability, by (2) a fraction. The numerator of the fraction is the amount which the employer was required to contribute to the plan for the five plan years preceding the plan year of the withdrawal. The denominator of the fraction is the total amount which all employers actually contributed to the plan for the same five-year period, with certain adjustments.

d. Third alternative method

The third alternative method would take a substantially different type of approach to computing withdrawal liability. Rather than determining the liability based upon the employer's share of plan contributions during the five-year period, the method is intended to compute the portion of the plan's unfunded benefit obligations which are attributable to service of plan participants with the employer. In addition, the plan's unfunded benefit obligations which are not attributable to any present employer would also be computed. A portion of those "unattributable obligations" would then be allocated to the employer. This would generally be done by attributing portions of the unfunded benefit obigations to each employer in accordance with specified rules although another type of allocation may be permissible under PBGC regulations. An employer's withdrawal liability would then be determined as the sum of (1) the portion of the plan's unfunded benefit obligations which are attributable to a plan participant's service with the employer, and (2) the portion of "unattributable obligations" which is allocated to the employer.

e. Other methods

The bill would authorize the PBGC to prescribe by regulations a procedure by which a plan may adopt other methods for determining withdrawal liability. The PBGC, before approving any such method, would be required to determine that the method would not significantly increase the risk of loss to the PBGC. In addition, the PBGC would be authorized to prescribe standard approaches for alternative methods for which approval would either not be necessary or would be necessary only under a modified procedure. Any such alternative method would be required to allocate to employers all of the plan's unfunded benefit obligations.

In determining an employer's withdrawal liability under the basic method or any of the alternative methods, if the method specifies the use of a five-year period in the numerator or denominator of a fraction, the plan could provide instead for the use of a period of more than five, but not more than 10, plan years, unless PBGC regulations provide otherwise.

3. Payment of withdrawal liability

a. In general

An employer who withdraws from a multiemployer plan would be required to pay its withdrawal liability to the plan in accordance with a payment schedule to be determined by the plan sponsor under standards set forth in the bill.[4] As soon as practicable after a with-

[4] The plan sponsor of a multiemployer plan is generally a Joint Board of Trustees which administers the plan.

drawal, the plan sponsor would be required to notify the employer of (1) the amount of withdrawal liability, and (2) the payment schedule. In addition, the plan sponsor would be required to demand that the employer make payment of withdrawal liability in accordance with the payment schedule.

In calculating the payment schedule, the plan sponsor would compute the annual payment under a formula set forth in the bill which would be payable over the period of years needed to amortize the liability or 30 years if less. The amount of each annual payment under the formula would be determined as the product of two amounts. The first amount would be the average number of contribution base units (*e.g.*, hours worked, tons of coal mined) for the three years during the period of 10 plan years, ending with the plan year in which withdrawal occurs, in which the number of units was the highest. The second amount would be the highest contribution rate (*e.g.*, cents per hour) which the employer had an obligation to contribute under the plan during the period of 10 plan years ending with the year of withdrawal.

However, with respect to the first amount, a plan could be amended to provide that for the first plan year ending on or after February 28, 1979, the number "5" is substituted for the number "10" and is increased by one for each succeeding plan year until it becomes 10.

For example, assume that an employer's withdrawal liability is $1 million and that the plan's valuation rate of interest is 6 percent. Assume that in the 3 years for which the contribution base units were the highest during the 10 most recent plan years during which the employer was obligated to contribute to the plan, the number of such units were 80,000 hours, 85,000 hours and 90,000 hours respectively, and that during the last ten plan years the highest contribution rate applicable to the employer under the plan was 75 cents an hour. The product of 85,000 hours (the average of 80,000, 85,000, and 90,000) and 75 cents an hour is $63,750. This would result in the amortization of the liability over approximately 49 years. Because the 49-year schedule is longer than 30 years, the employer would be liable to the plan for 30 annual payments of $63,750.

In the event that a multiemployer plan terminates upon (1) withdrawal of all employers in the plan or (2) withdrawal of substantially all employers in the plan pursuant to an agreement or arrangement to withdraw, the annual amount of withdrawal liability payable by each employer would be computed without regard to the 30-year limit. Thus in the above example, if all employers were to withdraw, the liability of the employer would be $63,750 a year for approximately 49 years.

In the case of "partial withdrawal," withdrawal liability payments are to be made in the same fashion as in the instance of a complete withdrawal, but the amount payable would be only a pro rata portion of the payment required in the case of a complete withdrawal.

b. Time for payment

Payment of withdrawal liability would begin no later than 60 days after the date on which a demand for payment is made by the plan sponsor. Under the bill, payments would generally be made in four equal quarterly installments unless a particular plan provided for

payment at other intervals. In any case where payment is not made when due, the bill would require interest to accrue with respect to the unpaid amount based on the prevailing market rate.

An employer would be permitted to prepay its withdrawal liability obligations in whole or in part without penalty.

In the event of default by an employer in payment of its withdrawal liability, the plan sponsor would be permitted to require immediate payment of the balance of the employer's withdrawal liability plus any accrued interest thereon. Default would generally occur where an employer fails to make any payment with respect to withdrawal liability when due, and further fails to make payment within 60 days after receiving written notice from the plan sponsor that payment of withdrawal liability is due but unpaid. Litigation instituted by an employer to contest the liability would not suspend the running of the 60-day period. Accordingly, if a employer withheld payment of the liability pending litigation, a default could occur. In addition, the plan would be permitted to adopt rules which would provide for other instances of default where it is indicated that there is a reasonable likelihood that an employer would be unable to pay its withdrawal liability.

In the case of a multiemployer plan which terminates each employer's obligation to make withdrawal liability payments for the future would cease at the end of the plan year in which the plan's assets are sufficient to meet all of its obligations. This determination of sufficiency would be made by the PBGC.

c. Notice requirements and furnishing of information

Withdrawal liability would be collectible upon notice to the withdrawn employer by the plan sponsor. In order for the plan sponsor to be in a position to accurately determine liability, the bill would require the employer to furnish information to the plan sponsor. After an employer withdraws from a plan, the plan sponsor would request in writing that the employer furnish such information as the plan sponsor reasonably considers necessary for it to fulfill its duties in computing and collecting withdrawal liability. The bill would permit an employer 30 days after such a written request from the plan sponsor to furnish the requested information.

The actual demand for payment of liability in accordance with the payment schedule would be made by the plan sponsor. The bill would require that before the plan sponsor demands payment the plan must afford the employer a reasonable opportunity (1) to identify errors in the determination of withdrawal liability, (2) to identify errors in the payment schedule, and (3) to furnish to the plan sponsor any additional pertinent information. The plan sponsor also would be required, if requested, to make relevant plan records reasonably available to the employer for review and duplication.

After the plan sponsor demands payment of withdrawal liability, an employer would be permitted to request the plan sponsor to review any item relating to the calculation of the liability and the payment schedule. Any such request for review would have to be made within 90 days after the employer receives the initial notice and demand for payment of the liability. In response to such a request by an employer,

the plan sponsor would be required to conduct a reasonable review of any matter questioned and to notify the employer of (1) its decision, (2) the grounds for its decision, and (3) the reason for any modification in the employer's withdrawal liability or of the payments schedule.

d. Determination of actuarial assumptions, etc.

The PBGC may prescribe regulations setting forth actuarial assumptions which a plan would be permitted to use in calculating withdrawal liability. However, a plan may provide instead that its own assumptions would be used to determine withdrawal liability rather than those developed by the PBGC.

In determining the unfunded benefit obligations under a plan, the plan's actuary and the plan administrator would be permitted to rely on data available or on data secured by certain sampling techniques in situations where complete and definitive data is absent. In addition, a complete valuation of the plan would not have to be made more often than once every three years for the purpose of computing unfunded benefit obligations, and reasonable estimates would be permitted in the interim years.

e. Plan rules and amendments

There are several situations where plans, in the application of their own rules, either initially or by amendment, are permitted a wide degree of latitude in allocating and calculating withdrawal liability. For example, the bill would not prohibit a plan from imposing a reasonable charge for the computation of the estimated withdrawal liability of an employer who has not withdrawn (or partially withdrawn) from the plan. In order to protect an employer from retroactive changes in a plan's rules the bill would restrict the application of retroactive plan rules or amendments relating to an employer's withdrawal liability with respect to a withdrawal occurring before its date of adoption, unless the employer in question consents to its earlier application.

The bill would also require that plan rules and amendments operate and be applied uniformly with respect to each employer except to the extent that lack of uniformity would be required to take into account employers' credit ratings.

Under the bill, generally when a plan rule or amendment affects withdrawal liability, the plan sponsor would be required to give notice of the rule or amendment to all employers required to contribute to the plan and to all employee organizations representing employees covered by the plan.

f. Notice to the PBGC

Under regulations the PBGC would be permitted to require a plan sponsor to notify the PBGC in any case where the withdrawal from a plan of employers has resulted in a significant reduction in total contributions to the plan.

g. Relationship to other rules

Actions taken under the bill pursuant to the withdrawal liability rules would not be considered prohibited self-dealing transactions for purposes of the nontax provisions of ERISA.

In addition, payments of withdrawal liability would not be considered employer contributions for purposes of calculating withdrawal liability.

h. Determinations presumed correct

Under the bill, a determination of withdrawal liability by a plan would be presumed correct unless the party seeking to contest the determination shows by a preponderance of the evidence that the determination is unreasonable or clearly erroneous.

The determination by a plan as to the amount of its unfunded benefit obligations for a plan year would be presumed correct, unless a party seeking to contest a determination showed by a preponderance of the evidence that (1) the actuarial assumptions and methods used in the determination were unreasonable in the aggregate, or (2) a significant error was made by the plan's actuary in applying actuarial assumptions or methods.

Where the withdrawal liability of a plan is determined before final regulations on determination of withdrawal liability are issued by the PBGC, any inconsistency with such final regulations would not be considered conclusive evidence that the determination made by the plan was unreasonable.

i. Reimbursements for uncollectible withdrawal liability

Under the bill, the PBGC is required to establish a supplemental program by May 1, 1982, to reimburse multiemployer plans for withdrawal liability payments which are uncollectible because of bankruptcy or insolvency proceedings involving the employer. Under the program, the PBGC could provide for the reimbursement of a plan for withdrawal liability which is uncollectible for any other appropriate reason. A plan could elect coverage under the supplemental program and, if it did so, would be charged a premium for such coverage. The cost of the program (including appropriate administrative and legal costs) would be paid only out of premiums collected under the program. The PBGC could carry out the program in whole or in part under an arrangement with private insurers.

4. Merger or transfer of plan assets or liabilities

a. Mergers and transfers to multiemployer plans

Under the bill, unless otherwise provided in PBGC regulations, a plan sponsor would not be permitted to allow a multiemployer plan to merge with one or more other multiemployer plans or to engage in a transfer of assets or liabilities to or from another multiemployer plan unless certain conditions are met. The applicable conditions are that:

(1) The accrued benefit of any participant or beneficiary will not be lower after the merger or transfer than it was before the merger or transfer;

(2) the benefits of participants and beneficiaries are not reasonably expected to be reduced under the reorganization or insolvency provisions of the bill during the five-plan-year-period following the year in which the merger or transfer is effective;

(3) it is not reasonably expected that the risk of loss to the PBGC with respect to any of the affected plans will increase significantly;

(4) there has been obtained an actuarial valuation of assets and liabilities of each of the affected plans for the plan year preceding the merger or transfer and the valuation is based on data not more than two years old; and

(5) the merger or transfer is agreed to by the plan sponsors of all the affected plans.

The fourth condition (regarding the requirement for an actuarial valuation) would not apply in the case of a transfer of assets pursuant to a written reciprocity agreement.

Under the bill, action taken under the merger, etc., provisions would not constitute a prohibited self-dealing transaction under the nontax provisions of ERISA.

The plan sponsor of a multiemployer plan which would be affected by a proposed merger would be permitted to request an advisory opinion from the PBGC that the proposed merger complies with the requirements of the bill.

b. Transfers between a multiemployer plan and a single-employer plan

The bill would provide that, in the case of a transfer of assets or liabilities from a multiemployer plan to a single-employer plan, the accrued benefit of any participant could not be lower immediately after the transfer than it was immediately before the transfer. In addition, in the case of a transfer of liabilities from a single-employer plan to a multiemployer plan or a merger of a single-employer plan into a multiemployer plan, no accrued benefit could be lower immediately after the transfer or merger than it was immediately before the transfer or merger.

As a general rule, the bill would require that, where a multiemployer plan transfers liabilities to a single-employer plan, the multiemployer plan would be liable to the PBGC in the event of the termination of the single-employer plan within 60 months after the transfer. Under the bill, the amount of the liability would be the lesser of (1) the excess of the insufficiency of plan assets of the terminated single-employer plan over 30 percent of the net worth of the employer maintaining the single-employer plan, or (2) the actuarial present value of the unfunded benefits transferred to the single-employer plan and guaranteed by the PBGC (such present value to be determined at the time of the transfer). This liability would apply to a multiemployer plan unless the PBGC determines that the interests of the participants and the PBGC are otherwise adequately protected or the PBGC fails to make a determination. The PBGC could make such determination within 120 days after receipt of a complete application from the plan sponsor of the multiemployer plan that such a determination be made. A multiemployer plan would not be liable under the bill because of the transfer of liabilities to a single-employer plan where (1) the liabilities had previously accrued under a single-employer plan that merged with the multiemployer plan, (2) the present value of the liabilities is not greater than the present value of liabilities for benefits which accrued before the single-employer plan merged with the multiemployer plan, and (3) the value of the assets transferred with the liabilities is substantially equal to value of the assets which would have

been in the single-employer plan if the employer had maintained and funded it as a separate plan under which no benefits accrued after the merger. This exception to the liability provision is sometimes referred to as the "in and out rule" because it is designed to protect multiemployer plans which merge with but later spin off single-employer plans.

In any case where a multiemployer plan would be liable under the bill because of a merger or transfer, the PBGC would be authorized to make arrangements for satisfaction of the liability.

Where benefits are transferred to a single-employer plan under the merger or transfer rules, the benefits would thereafter be governed by the termination insurance rules applicable to single-employer plans.

As a general rule, a multiemployer plan would not be permitted to transfer assets to a single-employer plan unless the plan sponsor of the single-employer plan agrees to the transfer. In the case of a transfer under the "in and out" rule, however, the plan sponsor need not so consent if advance agreement is obtained from the employer who, after the transfer, will be obligated to contribute to the single-employer plan.

c. Partition

Partition would occur under the bill when, pursuant to court order, a portion of the assets and liabilities of a multiemployer plan is segregated and held as a separate fund. Under the bill, a plan sponsor would be permitted to request the PBGC to petition a Federal District Court for an order of partition upon a showing of certain facts. The plan sponsor would have to show that (1) a bankruptcy or similar proceeding with respect to an employer has resulted or will result in a substantial reduction in the aggregate amount of contributions to the plan, and (2) it has determined that the participants' and beneficiaries' vested benefits which would be partitioned are directly attributable to service with the employer involved in the bankruptcy or similar proceeding.

If the PBGC determines that the multiemployer plan is likely to become insolvent as a result of a reduction of contributions because the employer is involved in a bankruptcy or similar proceeding, the PBGC may petition the Federal District Court for partition, if the PBGC determines that partition will significantly decrease the risk that insolvency of the multiemployer plan will occur. In such a case, the PBGC would be required to notify the plan sponsor and the plan participants and beneficiaries whose rights to benefits would be partitioned. The PBGC, in its petition for partition, would be permitted to propose a transfer of only vested benefits directly attributable to service with the employer involved in the bankruptcy or similar proceeding. An equitable share of the assets would also be transferred.

The portion of the multiemployer plan which is partitioned would be treated under the bill as a terminated multiemployer plan under which only the employer involved in the bankruptcy or similar proceeding would have withdrawal liability.

d. Assets transferable

Under the bill, multiemployer plans would be required to provide rules regarding the transfer of assets to another plan. The rules would

not be permitted to restrict unreasonably the transfer of plan assets in connection with a transfer of plan liabilities and would have to operate and be applied uniformly with respect to all transfers, except that reasonable variations would be permitted to take into account the potential financial impact of a particular transfer on a multiemployer plan.

Under the bill the PBGC would be required to prescribe regulations exempting from the merger, etc., rules, *de minimis* transfers of assets. Transfers pursuant to written reciprocity agreements would be exempt from the transfer rules except to the extent provided in PBGC regulations. This provision would not apply to the transfer of assets pursuant to a written reciprocity agreement, except to the extent provided in PBGC regulations.

5. Reorganization

a. In general

Under the bill, certain financially troubled multiemployer plans would be considered in a status of "reorganization." Once a plan enters a status of reorganization (1) benefits under the plan, including benefits currently being paid to retirees or their beneficiaries, could be reduced to the level of benefits eligible for guarantee by the PBGC—that is, to the level of basic benefits, (2) certain modifications to the otherwise applicable funding requirements of ERISA would apply, and (3) certain prohibitions against increases in benefits would apply.

b. Reorganization status

Under the bill, if the financial condition of a multiemployer plan becomes sufficiently poor under standards set forth in the bill, the plan would be considered in a status of reorganization and would be subject to certain special rules regarding funding and adjustments in accrued benefits.

A multiemployer plan would be in a reorganization for a year if the plan's reorganization index is greater than zero. The bill would define the reorganization index as the excess of the "benefit entitlements charge" of the plan over the contribution necessary to balance charges and credits in the plan's funding standard account (Sec. I. Maximum Funding Requirements) for the year without taking into account (1) credits for actual contributions to the plan for the year, (2) credits with respect to any waived funding deficiency for the year, and (3) credits with respect to any switchback liability for the year. "Benefit entitlements charge" would be defined as the amount necessary to amortize, in equal annual installments, the unfunded benefit obligations of the plan, determined as of the close of the plan year, (1) over 10 years in the case of obligations attributable to persons whose benefits are in pay status, and (2) over 25 years in the case of other obligations.

Under the bill, the determination of unfunded benefit obligations for purposes of calculating the benefit entitlements charge would be based on a valuation of the plan performed as of the last day of the "base plan year", with certain adjustments. The "base plan year" would be the last plan year ending at least six months before the earliest of the effective dates of the "relevant collective bargaining agreement" in effect for more than six months during the plan year for

which the charge is determined. A "relevant collective bargaining agreement" would be a collective bargaining agreement which has not been in effect for more than three years as of the end of the plan year. In any case where there is no such relevant collective bargaining agreement, the base plan year would be the plan year ending at least two years before the plan year in which the determination of unfunded benefit obligations is made.

c. Prohibition of certain lump sum payments

Under the bill, if a plan is in reorganization, the present value of a participant's vested benefits derived from employer contributions would not be permitted to be distributed in a lump sum if the distribution would exceed $1,750. This prohibition would not apply (1) in the case of a death benefit distribution, or (2) if the PBGC approves the payment of benefits in accordance with the plan in a greater amount after determining that the payment is in the interest of the plan's participants and beneficiaries and does not unreasonably add to the PBGC's risk of loss with respect to the plan.

d. Termination of reorganization status

In the case of a terminated multiemployer plan, the bill would not permit the plan to remain in reorganization status after the date on which the last employer maintaining the plan withdraws from the plan. For this purpose, the determination of whether a withdrawal takes place would be made in accordance with the definition of withdrawal contained in the bill's withdrawal liability provisions (see *1. Definition of withdrawal, a. Complete withdrawal*), and partial withdrawals would not be taken into account.

e. Notice of reorganization

Under the bill when a multiemployer plan is in reorganization and would require an increase in contributions (before taking into account the credit for overburdened plans and accrued benefit reductions permitted under the reorganization provisions), the plan sponsor would be required to notify interested parties of the reorganization status in the plan's summary annual report. The persons to be notified would be (1) plan participants and beneficiaries, (2) employers required to contribute to the plan, and (3) employee organizations representing plan participants with respect to the plan. In addition to stating that the plan is in reorganization status, the notice would have to state that it is possible that accrued benefits under the plan may be reduced or that an excise tax may be imposed on employers if they fail to increase plan contributions.

In addition, the PBGC would be authorized to issue regulations prescribing additional or alternative requirements for assuring adequate notice to, and access to relevant information, by interested parties.

f. Minimum contribution requirement

(*1*) *In general.*—Under the bill, a plan in reorganization or a plan under which plan assets are not more than a specified multiple of benefit payments would be required to meet special minimum funding requirements. These requirements would be met for a plan year if for the year the plan does not have a "reorganization deficiency." A "reorganization deficiency" would be defined under the bill as the excess

of the "minimum contribution requirement" over amounts contributed by employers to the plan for the plan year, including amounts contributed to meet withdrawal liability obligations.

The bill would define the minimum contribution requirement ts the lesser of two amounts. The first amount is the sum of (1) the plan's benefit entitlements charge,[4] and (2) in certain cases where the plan has been amended to increase benefits, the normal cost attributable to any plan amendment adopted or effective in a year when the plan is in reorganization reduced by 15 percent of the normal cost computed without regard to the amendments. The second amount is the product of (1) the sum of the two items determined as the first amount, and (2) a fraction. The numerator of the fraction is the plan's current contribution base (*e.g.*, hours of service for which employer contributions are actually received) for the plan year. The denominator of the fraction is the plan's valuation contribution base (see below).

On the other hand, in the case of a plan in reorganization, if the plan's benefit entitlements charge is less than the plan's "cash flow amount" for a plan year, the minimum contribution requirement is determined by substituting the "cash flow amount" for the benefit entitlements charge. For this purpose, "cash flow amount" is the aggregate amount of benefits payable under the plan increased by the plan's administrative expenses for the plan year and decreased by the value of available plan assets, as determined under regulations prescribed by the Secretary of the Treasury. Also, in determining a plan's minimum contribution requirement for a plan year, the benefit entitlements charge may be adjusted to reflect a plan amendment which reduces benefits under the reorganization or plan termination provisions of the bill or under the funding standard. This adjustment would only take place, however, if the amendment is adopted and effective no later than 2½ months after the close of the plan year, or within an extended period for making the amendment as prescribed in regulations issued by the Secretary of the Treasury.

For purposes of applying the fraction in the above formula, a plan's "valuation contribution base" is generally equal to the plan's contribution base for the plan year for which the actuarial valuation used to determine unfunded benefit obligations under the plan was made, with certain adjustments for upward or downward trends.

The bill would provide that the accumulated funding deficiency of such a plan for a plan year is equivalent to the plan's reorganization deficiency for the plan year. Thus, a plan which receives sufficient contributions to eliminate its reorganization deficiency for the year would also eliminate its accumulated funding deficiency and employers would thus not become subject to an excise tax for failure to meet the minimum funding standard for that year. In addition, as a conforming change, in the case of a multiemployer plan in reorganization the term "minimum contribution requirement" is substituted for "minimum funding standard" for purposes of the ERISA funding requirements.

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[4] Where the benefit entitlements charge is less than 115 percent of the amount of benefits payable during a plan year, reduced by the plan's investment income for the year, such amount is substituted for the benefit entitlements charge.

(*2*) *Credit for overburdened plans.*—In any case where a plan would be financially overburdened for a plan year (determined under standards set forth in the bill), the plan would be required to apply an "overburden credit" against its reorganization deficiency for the year. Accordingly, the overburden credit would reduce the additional funding needed to satisfy the minimum contribution requirement.

A plan would be considered overburdened for a plan year if (1) the average number of participants in pay status in the year exceeds the average number of active participants in that year and the preceding two plan years, and (2) the rate of employer contributions to the plan is at least equal to the greater of the rate of contributions for the preceding plan year or the rate of contributions for the year before the first plan year in which the plan was in reorganization. For purposes of this rule, "pay status participant" would mean a retired employee receiving pension payments as an annuity, and "active participant" would mean (1) any plan participant who has not failed to accrue a benefit for the year because of insufficient active employment, (2) any active employee who is not a plan participant but who is in an employment unit covered by a collective bargaining agreement requiring the employee's employer to contribute to the plan, and (3) any active employee considered an employee of the employer under a special formula in the bill which would treat certain employees as the employer's employees on the basis of the employer's withdrawal liability contributions to the plan. Also, for purposes of applying the above rule, in determining the first plan year in which a plan is in reorganization, years in which the plan was previously in reorganization are disregarded if followed by three consecutive plan years in which the plan is not in reorganization.

The amount of overburden credit for a plan year would be the product of two amounts. The first amount would be one-half of the "average guaranteed benefit paid," and the second amount would be the "overburden factor" for the plan year. The "average guaranteed benefit paid" would be computed by dividing (1) the total guaranteed annuity pension payments under the plan by (2) the number of pay status participants in the plan for the plan year. The "overburden factor" for a plan for a plan year would be the excess of (1) the average number of pay status participants over (2) the average of the average number of active participants in the plan in the plan year and the two preceding plan years.

Under the bill, the Secretary of the Treasury could deny a plan an overburden credit for a plan year upon a finding that (1) the plan's current contribution base was reduced without a correlative reduction in the plan's unfunded benefit obligations attributable to pay status participants, and (2) such reduction resulted from a change in an agreement providing for employer contributions to the plan. However, an employer withdrawal from a plan would not prevent the plan from being eligible for the overburden credit, unless the Secretary of the Treasury finds that in connection with the withdrawal a contribution base reduction resulted from a transfer of plan liabilities to another plan.

Under the bill, in the case of the merger of plans involving one or more multiemployer plans which are in reorganization, there would be

a limit on the amount of overburden credit which could be applied to the minimum contribution requirement of the merged plan. The maximum credit for any of the three plan years ending after the merger could not be permitted to exceed the sum of the overburden credits applied by each of the plans to avoid a reorganization deficiency for the last plan year ending before the merger.

The bill would also provide a safe harbor under which plans receiving a certain minimum level of employer contributions for a plan year would be deemed not to have a reorganization deficiency for the year. This minimum level would be reached where employer contributions are at least equal to the sum of (1) the rate of employer contributions which would be required for the year absent the minimum contribution requirement, and (2) an amount equal to seven percent of the rate of employer contributions which would apply in the absence of the minimum contribution requirement, multiplied by the number of plan years which elapsed since the effective date of those requirements. However, the safe harbor would not apply to a plan if a plan amendment adopted after the date of enactment of the reorganization funding requirement increases benefits with respect to service prior to the date the amendment is adopted.

g. Adjustments in accrued benefits

With very limited exceptions, under present law, plan amendments are not permitted to reduce benefits already accrued by an employee. However, in the case of a multiemployer plan in reorganization, the bill would permit plan amendments to reduce accrued benefits attributable to employer contributions under certain circumstances. The accrued benefits which are subject to reduction are those which are not eligible for guarantee by the PBGC.

The conditions which must be met in order for a plan's accrued benefits to be reduced are as follows:

a. A notice must be given, at least six months in advance of the first day of the plan year in which the amendment reducing accrued benefits is adopted, to plan participants and beneficiaries, to each employer with an obligation to contribute to the plan, and to each affected employee organization. The notice must state that the plan is in reorganization and that accrued benefits under the plan are required to be reduced or the failure to increase employer contributions to the plan may result in an excise tax for failure to meet the minimum funding standard.

b. Under regulations to be issued by the Secretary of the Treasury—

(i) accrued benefits of inactive participants are not to be reduced to a greater extent proportionally than accrued benefits overall are reduced;

(ii) benefits attributable to employer contributions other than accrued benefits (such as death benefits or health benefits) and the rate of future benefit accruals are to be decreased at least as much as accrued benefits of active participants are decreased; and

(iii) if the reduction in accrued benefits takes the form of a change in the mode of benefit or the requirements for bene-

fit entitlements, the reduction may not affect benefits in pay status on the effective date of the amendment or benefits of any participants who has reached, or is within five years of, normal retirement age on the effective date of the amendment.

c. The rate of employer contributions for the plan year in which the amendment becomes effective and for all future years while the plan is in reorganization must at least equal the greater of (i) the rate of employer contribution for the plan year in which the amendment becomes effective, or (ii) the rate of employer contributions for the preceding plan year.

Where accrued benefits are decreased by a plan amendment, a plan would not be permitted to recapture a benefit payment which has already been made under the plan's accrued benefit provisions determined before the amendment is adopted.

Once a plan has been amended to decrease accrued benefits, a future plan amendment would be permitted to increase accrued benefits or the rate of future benefit accrual only if the plan is first amended to restore previously eliminated accrued benefits of inactive participants and participants within five years of normal retirement age at least to the extent of the amount or rate by which the plan amendment increases benefit accruals. Moreover, where a plan is amended so that it partially restores previously accrued benefit levels or the previous rate of accrual, the benefits of inactive participants must be restored in at least the same proportions as other accrued benefits are restored.

Under the bill, no increase in benefits under a plan would be permitted to take effect in a plan year in which an amendment reducing accrued benefits is adopted or first becomes effective.

Where a benefit is reduced and later restored, a plan is not required to make retroactive benefit payments to participants who received payment under the reduced accrued benefit levels.

For purposes of applying these rules, an inactive participant is a person whose benefits are in pay status under the plan or a person not currently in service under the plan who nevertheless has a vested plan benefit.

The Secretary of the Treasury would be authorized to prescribe regulations which would permit benefit reductions or increases for different groups of participants on an equitable basis to reflect variations in contribution rates and other relevant factors reflecting differences in bargained-for levels of financial support for plan benefit obligations.

h. Insolvent plans

Under the bill, if a multiemployer plan is insolvent for a plan year, the plan would be required to suspend the payment of benefits, other than basic benefits, which exceed the "resource benefit level." This rule would not apply, however, if the PBGC were to prescribe a procedure for the guarantee of supplemental benefits (benefits exceeding basic benefits). A multiemployer plan would be considered insolvent for a plan year if (1) it is in reorganization, (2) it has been amended to reduce benefits to the level of base benefits, and (3) it does not have available resources sufficient to pay benefits under the plan when due for the plan year. The term "resource benefit level" would

mean the highest level of monthly benefits which the plan could pay out of its available resources.

For each year for which a multiemployer plan is insolvent, the plan sponsor would be required to determine and certify the resource benefit level of the plan, based on its reasonable projection of available resources and benefits payable. Where the suspension of benefits above the resource benefit level takes place, benefits would have to be suspended in substantially uniform proportions with respect to all persons whose benefits are in pay status under the plan. This would have to be done in a manner consistent wth regulations prescribed by the Secretary of the Treasury. In addition, the Secretary would be authorized to prescribe rules under which the benefits of different participant groups could be suspended in disproportionate fashion if varied equitably to reflect variations in contribution rates and other relevant factors reflecting differences in bargained-for levels of financial support for plan benefit obligations.

A plan sponsor would not be permitted to determine and certify a resource benefit level which is below the level of basic benefits for a plan year, except in a case where payment of all nonbasic benefits was suspended for the plan year.

If, by the end of a plan year for which a plan is insolvent, the plan sponsor determines that benefits could be paid above the resource benefit level, the plan sponsor would be required to direct the distribution of such additional benefits in accordance with regulations prescribed by the Secretary of the Treasury. Where, by the end of the year, benefits up to the resource benefit level have not been paid, the amounts necessary to bring benefits up to that level would be required to be distributed in accordance with regulations prescribed by the Secretary of the Treasury, to the extent possible, considering the plan's available resources.

Every three years during the period when a plan is in reorganization, beginning with the end of the first such plan year, the plan sponsor would be required to compare the value of plan assets with the total amount of benefit payments for the year. Except where plan assets exceed three times the total amount of benefit payments, the plan sponsor would be required to make a determination regarding whether the plan will be insolvent during any of the next three plan years. In addition, if at any time the plan sponsor determines, on the basis of experience, that available resources are not sufficient to pay benefits when due for the forthcoming plan year, it would be required to certify that the plan will be insolvent for that year. Such certification would be required no later than three months before the commencement of the plan year.

For each year for which a plan is insolvent, the plan sponsor would be required to determine and certify the resource benefit level no later than three months before the commencement of the plan year. In addition, if the plan sponsor determines that the plan may be insolvent any time in the next three plan years, it would be required to so notify (1) the Secretary of the Treasury, (2) the PBGC, (3) plan participants and beneficiaries, (4) each employer required to contribute to the plan, and (5) each affected employee organization. In addition, the above parties other than the Secretary of the Treas-

ury and the PBGC would have to be informed that, in the event of insolvency, benefit payments would be suspended but basic benefits would continue to be paid. No later than two months before the first day of a year for which a plan is insolvent, the plan sponsor would be required to notify each of the above parties of the plan's resource benefit level.

Where the plan sponsor believes that the resource benefit level for a plan year for which a plan is insolvent may not exceed the level of basic benefits, it would be required to so notify the PBGC no later than six months before the first day of the plan year.

Where a plan sponsor determines and certifies a resource benefit level below the level of basic benefits, it would be required to apply for PBGC financial assistance. Where the plan sponsor determines a resource benefit level above the level of basic benefits but anticipates that for any month during a year for which the plan is insolvent the plan will not have sufficient assets to pay basic benefits, the plan sponsor would be permitted to apply to the PBGC for financial assistance.

i. Financial assistance

Under the bill, if the PBGC receives an application for financial assistance from a plan and verifies that the plan will be insolvent and unable to pay basic benefits when due, the PBGC would be required to provide financial assistance to the plan in an amount sufficient to permit the plan to pay its basic benefits. Such financial assistance would be provided under such conditions as the PBGC determines would be equitable and appropriate to prevent unreasonable loss to the PBGC with respect to the plan. Where a plan receives financial assistance from the PBGC, it would be required to repay the PBGC for such assistance on reasonable terms which are consistent with regulations to be issued by the PBGC.

While the PBGC is determining the amount of assistance necessary to permit a plan to pay basic benefits, it would be permitted to provide interim financial assistance in an amount appropriate to avoid undue hardship to plan participants and beneficiaries.

j. Benefits under certain terminated plans

Under the bill, where a plan terminates, the plan sponsor would be required to amend the plan (1) to reduce benefits, and (2) to suspend certain benefit payments. The reduction in benefits would be to a level at which plan assets would be sufficient to discharge the plan's obligations when due, with respect to vested benefits under the plan. In making the determination of this level, the present value of vested benefits under the plan and the value of plan assets would have to be determined and certified as of the end of the plan year in which the plan terminates, and as of the end of every plan year thereafter. For this purpose, (1) plan assets would include the value of outstanding claims for withdrawal liability, and (2) for the year in which the plan terminates and for the following two plan years plan assets would also include certain additional assets attributable to employer withdrawal liability, as prescribed in regulations issued by the PBGC in order to avoid premature benefit reductions.

Any plan amendment reducing benefits would be required to (1) limit the reduction to the extent necessary to permit the payment of

vested benefits, (2) eliminate or reduce only those accrued benefits which are not guaranteed by the PBGC, (3) except to the extent permitted by the PBGC, make reductions only in accordance with the reorganization rules and only to the extent permitted under such rules, and (4) become effective no later than six months after the plan year in which it was determined that the present value of vested benefits exceeds plan assets.

The benefit payments which would have to be suspended where a plan terminates would be all nonbasic benefits that cannot be provided out of plan resources.

k. Enforcement

(*1*) *Civil actions.*—Under the bill, certain persons would be permitted to bring a civil action for appropriate legal relief, equitable relief, or both. These parties would be (1) a plan fiduciary, an employer, a plan participant, or a plan beneficiary, any of whom are adversely affected by the act or omission of any party under the provisions of the bill with respect to multiemployer plans, as well as (2) an employee organization which represents an affected plan participant. However, no such action could be brought against the Secretary of the Treasury or the Commissioner of Internal Revenue.

In any case where a civil action is brought to compel an employer to pay withdrawal liability, the court would be authorized to award (1) interest on the unpaid liability, as well as (2) any liquidated damages payable to the plan. In general, the district courts of the United States would have exclusive jurisdiction for civil actions under the bill without regard to any amount in controversy. In the case of an action brought by a plan fiduciary to collect withdrawal liability, State courts of competent authority would also have jurisdiction.

The proper venues in Federal district court for bringing an action under the bill would be (1) the district where the plan is administered, (2) the district where a defendant resides, or (3) the district where a defendant does business. Service of process would be permitted in any district where a defendant (1) resides, (2) does business, or (3) may be found. In addition, a copy of the complaint in any action brought under the bill would have to be served on the PBGC by certified mail.

In the case of an action under the bill, the court would be permitted to award to the prevailing party all or a portion of costs and expenses in connection with the action, including reasonable attorneys fees.

The period of limitations for the commencement of an action under the bill would expire six years after the date on which the cause of action arose.

The PBGC would be permitted to intervene in any action brought under the bill.

(*2*) *Penalty for failure to provide notice.*—If any person fails without reasonable cause to provide any notice required under the termination insurance program for multiemployer plans or under implementing regulations the person would be liable to the PBGC in an amount up to $100 for each day that the failure continues. The PBGC would be authorized to bring a civil action against the person failing

to give notice. The action could be brought in the United States District Court for the District of Columbia or in any United States district court within the jurisdiction where (1) the plan assets are located, (2) the plan is administered, or (3) a defendant resides or does business. Service of process for such an action could take place in any district where a defendant (1) resides, (2) does business, or (3) may be found.

Effective date

The provisions of the bill would apply on the date of enactment except that the withdrawal liability rules would take effect on February 27, 1979, and the reorganization provisions would take effect on the first day of the first plan year beginning after the earlier of (1) the expiration date of the last collective bargaining agreement in effect on the date of enactment of the bill or (2) 3 years after the date of enactment of the bill. Also, the bill provides that where an employer has withdrawn from a multiemployer plan before enactment and the PBGC has found that employer had liability under present law, the PBGC is to retain that liability in accordance with present law.

D. Termination of Multiemployer Plans (Sec. 103 of the Bill and Sec. 4041A of ERISA

Present law

Under present law, the time at which a plan terminates for purposes of termination insurance, is generally determined by the responsible officials of the plan.[1] However, ERISA provides a procedure under which the PBGC may institute procedings to terminate a plan.[2]

Explanation of provisions

Time of termination

The bill would provide new rules for determining the date on which a multiemployer plan terminates. Under the bill, in the case of (1) the adoption (after the effective date of the bill) of a plan amendment that provides that participants will receive no credit under the plan for any purpose for service with an employer after the later of the date the amendment is adopted, or the date the plan amendment is effective, or (2) the adoption of an amendment which causes a plan to become a defined contribution plan, the plan is considered to be terminated on the later of the date the amendment is adopted or the date the amendment is effective. In addition, under the bill, a plan from which every employer has withdrawn is considered terminated on the earlier of (1) the date the last employer withdrew, or (2) the first day of the first plan year for which no employer contributions were made under the plan.

Benefit payments

Upon termination of a multiemployer plan, the bill generally would require the plan administrator (1) to limit benefit payments to vested benefits as of the date of termination, and (2) to limit benefit payments to annuities (except for lump sum death benefits and lump sum benefit payments of $1,750 or less), unless the plan distributes its assets in satisfaction of all vested benefits. The bill also would require the plan administrator to reduce or suspend benefit payments as provided for by the bill (see C. Employer Withdrawal Liability, *Explanation of provisions—5. Reorganization, j. Benefits under certain terminated plans*).

Employer contributions

The bill would require that employers who continue to maintain a terminated plan continue to make contributions to the plan at a rate not less than the highest rate applicable during the period of the two preceding plan years ending on or before the date of termination

[1] See ERISA secs. 4041 and 4048.
[2] See ERISA secs. 4042 and 4048.

unless the PBGC approves a reduction. This provision would not apply, of course, where all employers have withdrawn from a multiemployer plan.

Reports

The bill would authorize the PBGC to prescribe such reporting requirements for, and rules for administration of, terminated multiemployer plans as the PBGC deems necessary to protect the interests of plan participants or to prevent unreasonable losses to the PBGC.

Effective date

These provisions of the bill would apply on the date of enactment.

E. Termination Insurance Premiums (Sec. 105 of the Bill and Sec. 4006 of ERISA)

Present law

Under present law, a multiemployer plan which is subject to the termination insurance program is required to pay annual premiums to the PBGC at the rate of $.50 per plan participant (the annual premium for single employer plans is $2.60 per plan participant). The premium rate may be raised by the PBGC with the approval of the Congress by a concurrent resolution. Such a resolution is referred to the Committee on Ways and Means and the Committee on Education and Labor of the House and the Committee on Finance and the Committee on Labor and Human Resources of the Senate. Also, the PBGC is authorized to set premium rates for insurance of nonbasic benefits and to develop a risk-related premium schedule.[1]

Explanation of provisions

Schedules

The bill would continue the authority of the PBGC to prescribe (subject to approval by the Congress) such schedules of premium rates and bases for the application of those rates as may be necessary to provide sufficient revenue to fund the PBGC to carry out its functions.

Premium rates

Under the bill, as under present law, the PBGC would maintain separate schedules of premium rates and bases for multiemployer plans and for single-employer plans. The bill clarifies present law by providing for separate rates and bases for nonbasic benefits under (1) multiemployer plans and (2) single-employer plans. The bill also continues the authority of the PBGC to revise the premium rate and base schedules for basic benefits (under multiemployer or single-employer plans) whenever the PBGC determines that revision is necessary, subject to approval by Congress.

Basic benefit rates

The bill would continue the present annual per-participant premium of $2.60 for single-employer plans and provides that the annual per-participant premium for multiemployer plans would increase from the present $.50 rate to $2.60 over a nine year period.[2] Under the bill, the premium would not apply more than once per plan year where an individual participates in more than one plan maintained by the same employer. Also, the bill continues the authority of the PBGC to

[1] See ERISA sec. 4006. At the present time, the PBGC does not insure nonbasic benefits and has not developed a risk-related premium.

[2] For the first and second plan years beginning after enactment, the per-participant premium would be $1. The premium would rise to $1.40 for the third and fourth years, to $1.80 for the fifth and sixth years, to $2.20 for the seventh and eighth years, and to $2.60 for the ninth and succeeding years.

prescribe regulations under which the premium rate for multiemployer plans will not apply to the same participant in a multiemployer plan more than once for any plan year.

In addition, the bill modifies the authority of the PBGC to establish alternative premium rates and bases for basic benefits (subject to Congressional approval) by deleting specific restrictions on the computation of such premiums.

Nonbasic benefits

The bill generally would continue the authority of the PBGC to prescribe schedules of premium rates and bases for nonbasic benefits. With respect to nonbasic benefits in the form of supplemental benefits under a multiemployer plan (see F. Multiemployer Guarantees; Aggregate Limit on Guarantees, *Explanation of provisions—Other benefits*), however, the bill provides that premium rates prescribed by the PBGC may reflect any reasonable consideration that the PBGC determines to be relevant. Nonbasic benefits would be guaranteed by the PBGC only at the election of a plan. Such guarantees must be financed only from premiums collected for this program.

Effective date

These provisions of the bill would apply on the date of enactment.

F. Multiemployer Guarantees; Aggregate Limit on Guarantees (Sec. 102 of the Bill and Secs. 4022A and 4022B of ERISA)

Present law

Since ERISA was enacted in 1974, the insurance of employee benefits under terminated multiemployer plans has been discretionary with the PBGC. Under present law, such insurance by the PBGC will become mandatory after April 30, 1980. Only basic benefits are presently eligible for the PBGC insurance. The basic benefits under a plan are the participants' monthly nonforfeitable retirement benefits (excluding supplementary benefits, for example, subsidized early retirement benefits) under the multiemployer plan determined before the plan terminates. Basic benefits may be guaranteed by the PBGC only to the extent of the lesser of (1) a participant's average monthly gross income from the employer during the five consecutive years for which the participant's gross earnings from the employer are the highest, or (2) $750, adjusted for inflation since 1974 ($1,159.09 for 1980).[1] The guarantee of benefits which have been in effect for fewer than 60 months at the time of plan termination, and of benefit increases within 60 months before plan termination, is generally phased in at the rate of 20 percent per year or $20 per month (if greater) for each year (not in excess of 5) the plan or benefit increase has been in effect. No guarantee is provided for benefits established or increased during the 60-month period unless the PBGC finds substantial evidence that the plan was terminated for a reasonable business purpose and not for the purpose of obtaining payments under the termination insurance program.[2]

As indicated, in the case of a multiemployer plan which terminates after the effective date of the insurance program but before May 1, 1980, benefits are insured (up to the usual limits) only in the discretion of the PBGC. In order for the PBGC to pay benefits under such a plan, (1) the plan must have been maintained during the full 60-month period preceding termination, and (2) the PBGC must determine that payment of the benefits will not jeopardize the payment of guaranteed benefits under plans which may terminate after April 30, 1980.[3]

Benefits under single-employer plans are insured by the PBGC subject to the same benefit limits that apply to multiemployer plans. For single-employer plans, however, the insurance is automatic and does not depend upon the exercise of discretion by the PBGC as to whether plan benefits should be insured.[4]

[1] See ERISA sec. 4022(b)(3).

[2] See ERISA sec. 4022(b)(8).

[3] See ERISA sec. 4082(c)(2).

[4] See ERISA sec. 4022 and 4082 (a) and (b).

Multiemployer plans pay an annual per-participant premium of $.50 for termination insurance. The annual, per-participant premium for single-employer plans is $2.60. Premiums may be increased by the PBGC with Congressional approval. The insurance for basic benefits is not voluntary and is provided whether or not premiums are paid.

Explanation of provisions

Insurable event

Under the bill, the PBGC would guarantee nonforfeitable benefits under a multiemployer plan covered by the program (other than benefits which become nonforfeitable solely on account of plan termination) if the plan terminates or becomes insolvent.

Duration of benefit

Under the bill, benefits (or benefit increases) in effect under a plan for fewer than 60 months before plan termination would not be guaranteed. Also, a benefit (or benefit increase) in effect for fewer than 60 months before the first day of a plan year in which a plan amendment reducing benefits (as permitted under the bill (see C. Employer Withdrawal Liability, *Explanation of provisions—5. Reorganization, g. Adjustments in accrued benefits*) or present law (Code sec. 412(c)(8)) would not be guaranteed. For purposes of the 60-month test, (1) the date a benefit (or benefit increase) is first in effect is the later of the date the relevant documents are executed or the effective date of the benefit or benefit increase; (2) the time a benefit (or benefit increase) is in effect under a successor plan includes the time the benefit (or benefit increase) was in effect under a previously established plan; and (3) the 60-month period does not begin before the date the benefit guarantee provisions of ERISA first applied to the plan (September 2, 1974, for plans in existence on that date).

Level of guarantee

Generally, for each year of credited service under a multiemployer plan, the bill would limit the maximum guarantee for monthly base benefits to 100 percent of the first $5 of benefit accrual plus 70 percent [5] of the product of the lesser of $15 or the employee's accrual rate for monthly base benefits in excess of $5. The bill limits base benefits to retirement benefits which are otherwise subject to guarantee and which (1) are not greater than the plan benefit payable at normal retirement age as a life annuity (determined under PBGC regulations) and (2) are determined without regard to accrued benefit reductions permitted by the bill to be made on account of the cessation of contributions by an employer (see L. Minimum Vesting Require-

[5] The pecentage is reduced to 60 percent in the case of a multiemployer plan which becomes insolvent before the year 2000 if the plan sponsor does not establish to the satisfaction of the PBGC that, for the last plan year beginning before 1976 and for each of the nine preceding plan years during which the plan was maintained, the total contributions required under the plan for each plan year were at least equal to the sum of (1) the normal cost for the plan year; and (2) interest on the amount of the unfunded past service liability as of the beginning of the plan year. The reduction to 60 percent would not apply where required contributions meet the minimum requirements on an aggregate basis during the 10-year period and certain other standards are met.

ments). Also, the bill provides that the accrual rate for base benefits is computed by dividing a participant's base benefit by the number of full and fractional years of service credited to the participant under the plan for benefit accrual purposes (including full and fractional years of pre-plan service taken into account).

For example, if an employee participated in a multiemployer plan for 25 years and had earned a monthly retirement benefit of $175 beginning at age 65 (the normal retirement age under the plan), the employee's accrual rate would be $7 ($175/25 years). Under the bill, the employee's base benefit would be $160 per month (($5+.7×$2)×25). If the plan did not meet the funding requirement, the base benefit would be $155 per month.

Where a benefit has been reduced because of the cessation of employer contributions as permitted by the bill, the guaranteed level of benefit is either the benefit determined as described above or the reduced benefit, whichever is less. Benefits eliminated by a plan in reorganization would not be guaranteed. In addition, the bill provides that benefits for a substantial owner under a multiemployer plan are not guaranteed if they would not be guaranteed under a single-employer plan.

The bill continues the requirement of present law that PBGC premium increases must be approved by the Congress. However, the bill adds a new procedure for periodic Congressional review of premiums and guarantee levels. Under the new procedure, if increased premiums are needed to maintain guarantee levels, and the increased premiums are not approved, guarantee levels would be reduced. Also, if premiums are found to be in excess of the amount required to maintain guarantee levels, premiums could be reduced or guarantee levels could be increased with Congressional approval.

In particular, the bill would provide that not later than five years after enactment, and every fifth year thereafter, the PBGC is to report to the Congress on the level of premiums under multiemployer plans needed to maintain the basic benefit guarantees then in effect and whether those guarantees can be increased without increasing multiemployer plan premiums for basic benefits. If the report indicates that increased premiums are necessary to support the guarantee levels in effect, the PBGC would be required to submit to the Congress (1) a revised guarantee schedule that would be necessary if an increased premium is not adopted, (2) a revised schedule of basic-benefit premiums required if basic-benefit guarantees are not revised, and (3) a revised schedule of premiums and a revised schedule of guarantees under which the premium rates are higher than the existing rates but lower than the rates needed to support the existing schedule of guarantees. The report and any proposed revised premium and guarantee schedules would be submitted to the Committee on Ways and Means and the Committee on Education and Labor of the House, and to the Committee on Finance and the Committee on Labor and Human Resources of the Senate by March 31 of any calendar year in which Congressional action is requested. The revised guarantee schedule consistent with existing premiums would go into effect on the first day of the second calendar year following submission to the Congress if

the Congress does not approve the premium increase or one of the other two revised schedules by a concurrent resolution.

If a report indicates that a higher level of guarantees can be supported by the premium level in effect, the PBGC would be required to prepare an analysis showing (1) reduced premiums consistent with existing guarantees, and (2) increased guarantees consistent with existing premiums, and to submit both revised schedules as proposals to the specified committees. If the Congress approves one of the proposed schedules by a concurrent resolution, that schedule would go into effect. The bill continues the rules of the House and Senate for consideration of a concurrent resolution approving an increase in the guarantee limits for basic benefits.

Other benefits

The PBGC would be authorized to guarantee benefits under multiemployer plans other than basic benefits, if feasible, subject to terms and conditions specified by the PBGC. Under the bill, within 18 months after enactment, the PBGC would also be required to propose regulations to guarantee benefits (referred to as supplemental benefits) that would be basic benefits except for the dollar or percentage limits provided by the bill, subject to terms and conditions specified in PBGC regulations. Under the bill, a plan's election of supplemental guarantees would generally be irrevocable, could be made only within a specified time, and could not be made unless plan assets are at least 15 times the benefit payments. Congressional approval would not be required for changes in premium or guarantee schedules for nonbasic benefits or for the fund for reimbursement for uncollectible withdrawal liability. Benefits under a plan other than base benefits would be guaranteed only if the plan elected to have such benefits guaranteed.

Aggregate limit on benefits guaranteed

The bill would limit the aggregate present value of benefits provided by the PBGC with respect to any participant to the same level provided by present law except that, under PBGC regulations, financial assistance provided by the PBGC to a plan (see C. Employer Withdrawal Liability, *Explanation of provisions—5. Reorganization, (i) Financial assistance*) would be taken into account as a benefit provided by the PBGC to plan participants under a terminated plan.

Effective date

Generally, these provisions of the bill would apply as of the date of enactment. The bill provides, however, that the level of benefits guaranteed under the termination insurance program for multiemployer plans which have already terminated and which are guaranteed by the PBGC under present law are not to be less than the new levels provided by the bill for multiemployer plans.

G. Annual Report of Plan Administrator (Sec. 106 of the Bill and Sec. 4065 of ERISA)

Present law

Under ERISA, a plan administrator is required to report the occurrence of specified reportable events to the PBGC. These reports are designed to forewarn the PBGC for potential economic problems under plans.[1] Also, the plan administrator of a plan to which more than one employer contributes is required to notify each substantial employer annually that it is a substantial employer.[2] In addition, reports are required to be filed with the PBGC by plan administrators in connection with the payment of premiums (Form PBGC–1).

Explanation of provisions

The bill would add a requirement that the annual report of a plan administrator, with respect to a plan subject to termination insurance, includes such information with respect to the plan as the PBGC determines is necessary for enforcement purposes and that is required by PBGC regulations. The bill provides that the information required may include (1) a statement by the plan's enrolled actuary of (a) the present value of all benefit entitlements under the plan as of the end of the plan year, and (b) the value of plan assets as of that time; and (2) a statement certified by the plan administrator of the value of each outstanding claim for withdrawal liability as of the close of the plan year and as of the close of the preceding plan year.

Effective date

This provision of the bill would be effective upon enactment.

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[1] See ERISA sec. 4043.
[2] See ERISA sec. 4066.

H. Contingent Employer Liability Insurance (Sec. 107 of the Bill and Sec. 4023 of ERISA)

Present law

ERISA provided for a program designed to permit an employer to insure against the contingent employer liability (up to 30 percent of the employer's net worth) arising out of the termination of a plan with insufficient assets to provide benefits at the insured level. Under ERISA, the contingent employer liability insurance (CELI) may be developed by the PBGC in conjunction with private insurors. The PBGC is authorized to provide premium rates and collect premiums under the CELI program.[1]

Explanation of provisions

The bill would repeal the contingent employer liability insurance provisions of ERISA for multiemployer plans and single-employer plans.

Effective date

This provision of the bill would be effective upon enactment.

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[1] See ERISA sec. 4023. Because of concerns over adverse selection, premium levels, and the possibility of abuse, no CELI program has been initiated by the PBGC. (Private insurors have not shown an interest in developing a CELI program.)

I. Minimum Funding Requirements (Secs. 202 and 304 of the Bill, Sec. 412 of the Code and Secs. 301 and 302 of ERISA)

Present law

In general

Under the Code and the nontax provisions of ERISA,[1] multiemployer pension plans are required to meet a minimum funding standard on an annual basis. As an administrative aid in the application of this standard, ERISA requires that each plan must establish and maintain a special account called a "funding standard account" to which specified charges and credits (including credits for contributions to the plan) must be made for each plan year. If, as of the close of a plan year, the account does not have a balance of charges, the plan is treated as satisfying the minimum funding standard for that year. Thus, as a general rule, the minimum contribution for a year is determined by the amount by which charges to the account would exceed credits to the account if no contribution were made to the plan.

For example, in the case of a plan the plan year of which is the calendar year, if, as of the close of 1980, charges to the plan's funding standard account would exceed credits to the account by $200,000 if no contribution were made to the plan for 1980, a minimum contribution for the year of that amount would generally be required for the plan to meet the minimum funding standard for 1980.

If, as of the close of any plan year, charges to the funding standard account exceed credits to the account, the excess is called an "accumulated funding deficiency." The deficiency is subject to a five-percent nondeductible excise tax and, if not corrected within a specified correction period, is also subject to a 100-percent nondeductible excise tax. The tax is payable by the employers responsible for contributing to the plan for the year.

Actuarial cost methods

In computing the amounts which are required to be contributed to a defined benefit pension plan for a plan year in order to meet the minimum funding standard for the year, the plan's actually utilizes what is known as an "actuarial cost method."[2] Generally, an actuarial cost method breaks up the cost of the benefits into annual charges consisting of two elements. These elements are called (1) normal cost, and (2) past service cost. Normal cost generally represents the cost of future benefits under the plan for current employees and, under some funding methods, for separated employees, which will be funded by future contributions to the plan (1) in level dollar amounts, (2)

[1] See sec. 412 of the Code and part 3, Title I of ERISA.
[2] See Temp. Treas. Regs. § 11.412(c)(1)-1 and Prop. Treas. Regs. § 1.412(c)(3)-1.

as a uniform percentage of payroll, (3) as a uniform amount per unit of service (e.g., 50 cents per hour), or (4) on the basis of the actuarial present values of benefits accruing under the plan in particular plan years. Past service liability represents the cost of future benefits under the plan (1) on the date the plan is first effective, or (2) on the date a plan amendment increasing plan benefits is first effective, which will not be funded by future plan contributions to meet normal cost.

Normal cost and past service cost are key elements in computations under the minimum funding standard. While these costs may differ substantially, depending upon the actuarial cost method used to value a plan's assets and liabilities, they must be determined under an actuarial cost method permitted by ERISA. ERISA enumerates six acceptable actuarial cost methods and provides that additional methods may be permitted under Treasury regulations.

Charges to funding standard account

Normal cost

Each plan year, the plan's funding standard account must be charged with the normal cost assigned to that year under the plan's actuarial cost method. This will generally mean that the employers maintaining the plan will have to contribute to the plan an amount at least equal to the normal cost to create a credit in the funding standard account to balance off the charge for normal cost.

For example, if the normal cost for a plan for the plan year ending December 31, 1980, is $150,000, the funding standard account is charged for that amount. Assuming there are no credits to the account to offset that charge, an employer contribution to the plan of $150,000 would be required for 1980 in order to avoid an accumulated funding deficiency for that year.

Past service liability

There are three separate charges to the funding standard account which may arise as the result of past service liabilities. The first applies only to a plan in existence on January 1, 1974; the second applies only to a plan which came into existence after January 1, 1974; and the third applies to a plan under which past service liability has increased due to a plan amendment made after January 1, 1974.

In the case of a plan in existence on January 1, 1974, the funding standard account is charged with a portion of the past service liability under the plan determined as of the first day of the plan year, beginning in the first year the funding standard applied to the plan (generally 1976). The amount of the liability with which the account is charged in the case of a multiemployer plan is based on amortization of past service liabilities over a period of 40 years. The liability must be amortized (in much the same manner as a mortgage) in equal annual installments over the 40-year amortization period.

For example, assume that a plan in existence on January 1, 1974, uses the calendar year as its plan year and has a past service liability of $500,000 determined as of January 1, 1976. The plan's actuary uses an interest rate of six percent in determining plan costs. The

40-year schedule requires that $31,350 be charged against the funding standard account each year to amortize this liability. Thus, for each year in the 40-year period commencing with 1976, the plan's funding standard account is charged with the amount of $31,350. This will require the employers maintaining the plan to make a contribution to the plan of that amount for each year in the 40-year period to generate a credit to the account to offset the charge, unless it is offset by some other credit to the account or the plan becomes fully funded.

In the case of a plan not in existence on January 1, 1974, the plan is generally required to determine past service liability as of the first day of its first plan year beginning after September 2, 1974. This liability must be amortized by a multiemployer plan in equal annual installments over 40 years (30 years, in the case of a single-employer plan) in the same manner as past service liability is amortized for a plan in existence on January 1, 1974. Each year during the 40-year period, the funding standard is charged with the amount of past service liability amortized in that year unless the plan becomes fully funded.

In any case where a net increase in benefits under a plan takes place as a result of plan amendments in a year, the unfunded past service liability attributable to the net increase is determined and amortized over a period of 40 years in the case of a multiemployer plan (30 years for a single-employer plan). Each year during the 40-year period, the funding standard account is charged with the amount of the amortization for that year, and the employers are required to make sufficient contributions to offset the charge unless it is offset by another credit or the plan becomes fully funded.

Experience losses

In determining plan funding under an actuarial cost method, the plan's actuary generally makes certain assumptions regarding rates of interest, mortality, disability, salary increases, etc. If on the basis of these assumptions the contributions made to the plan result in unfunded liabilities less than that anticipated by the actuary, the excess of the expected unfunded liabilities over the actual unfunded liabilities is called an "experience gain."

On the other hand, if the expected unfunded liabilities fall short of the actual unfunded liabilities, the shortfall is considered an "experience loss." The minimum funding standard requires that an experience loss be amortized in equal installments over a period of 20 years (15 years for a single-employer plan) and that the funding standard account be charged with each year's amortization unless the plan becomes fully funded. (Some funding methods do not separately determine experience gains or losses).

Changes in actuarial assumptions

If the actuarial assumptions used for funding a plan are revised and under the new assumptions the accrued liability of the plan is less than the accrued liability computed under the old assumptions, the decrease in accrued liability is considered a "gain from changes in actuarial assumptions." "Accrued liability" refers to the actuarial present value of projected pension benefits under the plan which will not be funded by future contributions to meet normal cost. On the other hand, if,

after the change in assumptions, accrued liability exceeds accrued liability computed under the old assumptions, the excess is considered a "loss from changes in actuarial assumptions." The amount of the loss from changes in actuarial assumptions must be amortized in equal annual installaments over a period of 30 years, and the amount of each year's amortization must be charged to the funding standard account unless the plan becomes fully funded.

Waived funding deficiency

If 10 percent or more of the employers contributing to a multiemployer plan are unable to make contributions which will satisfy the minimum funding standard for a plan year without substantial business hardship, the Internal Revenue Service is permitted to waive all or a portion of the contribution requirements of the minimum funding standard for the plan year if it is determined that requiring the contributions would be adverse to the interests of plan participants in the aggregate. However, the Service is not permitted to grant such a waiver for a plan for more than five plan years in any period of 15 consecutive plan years. The amount of the contribution not required for as a result of the waiver is called a "waived funding deficiency."

Under the funding standard, the amount of a waived funding deficiency must be amortized in equal annual installments over a period of 15 years commencing with the year first following the year for which the waiver is granted, and the funding standard account must be charged each year with the amount amortized for that year unless the plan becomes fully funded.

Switchback liability

ERISA provides that certain plans may elect to use an alternative minimum funding standard account for any year in lieu of the funding standard account, and prescribes specified annual charges and credits to the alternative account. If it would take a smaller contribution to balance charges and credits in the alternative account than it would take to balance the funding standard account for a plan year, no accumulated funding deficiency is considered to exist for the year if a contribution satisfying the requirements of the alternative account is made. During years for which contributions are made under the alternative account, an excess of charges over credits may build up in the funding standard account. If the plan later switches back from the alternative account to the funding standard account, this excess of charges over credits must be amortized over a period of five plan years. This amount is known as a "switchback liability."

Credits to funding standard account

Employer contributions

Each plan year, the funding standard account is credited with the amount considered contributed to a plan by employers maintaining the plan for the year. This amount includes contributions made during the year as well as contributions made on account of the year up to two and one-half months after the close of the year. (IRS can extend the period for an additional six months.)[3]

[3] See Temp. Treas. Regs. § 11.412(c)–12.

Past service liability

If plan amendments in a year result in a net decrease in past service liability, the amount of the decrease must be amortized in equal annual installments over a period of 40 years, and each year's amortization during the 40-year period (30 years for a single-employer plan) must be credited to the funding standard account unless the plan becomes fully funded. These credits will help offset charges to the account and will decrease otherwise required contributions to the plan.

Experience gains

If a net experience gain is determined in a plan year, the gain must be amortized in equal annual installments over a period of 20 years (15 years for a single employer plan), and the amount amortized each year must be credited to the funding standard account unless the plan becomes fully funded. These credits also offset charges to the account and thus decrease contribution requirements.

Changes in actuarial assumptions

If a change in actuarial assumptions results in a gain because of a decrease in plan accrued liability under the new assumptions, the gain must be amortized in equal annual installments over a period of 30 years. The amount amortized each year must be credited to the funding standard account unless the plan becomes fully funded and the credit will reduce plan contributions otherwise required for the year.

Switchback liability

When a plan switches back from the alternative minimum funding standard account to the funding standard account, the funding standard account is credited with the excess of charges over credits which have built up in that account. If this were not done, the entire excess would have to be offset by a contribution (or other credit) to the account in the year of the switchback to prevent an accumulated funding deficiency.

Extension of amortization periods

The Internal Revenue Service is permitted to extend for up to 10 years the period for amortizing any unfunded past service liability under a multiemployer plan.[4] If such an extension is granted, the period over which the funding standard account is charged with amortization of the liability is similarly extended. Before granting such an extension, the Service must determine that (1) the extension will carry out the purposes of ERISA, (2) the extension will provide adequate protection to plan participants and beneficiaries, and (3) the failure to grant the extension will (a) result in a substantial risk of plan termination or in substantial reduction of pension benefits or compensation, and (b) be adverse to the interests of plan participants in the aggregate.

Explanation of provisions

In general

The bill would modify the periods over which past service liabilities and experience gains and losses under multiemployer plans would be

[4] Under Reorganization Plan No. 4 of 1978, referral to the Secretary of Labor may be required.

required to be amortized for the purpose of making charges and credits to the funding standard account. In general, the new amortization periods would follow those required of single-employer plans for funding purposes. However, certain transitional rules would be provided under which the present law amortization periods would continue to apply to multiemployer plans in certain circumstances.

In addition, the Secretary of the Treasury would be authorized to prescribe regulations requiring additional charges and credits to the funding standard account to prevent withdrawal liability payments from being unduly reflected as advance funding of plan liabilities.

The bill would also make conforming amendments to the funding rules to take account of changes made in other parts of the bill.

1. Modification of charges to funding standard account

Past service liability

Under the bill, certain amounts of unfunded past service liability would be amortized in equal annual installments over 30 years for purposes of determining charges to the funding standard account. These would be (1) unfunded past service liability determined as of the first day of the first plan year of a plan not in existence on enactment, and (2) any net increase in unfunded past service liability arising from plan amendments adopted during a plan year.

Experience losses

Under the bill, a net experience loss would be amortized in equal annual installments over 15 years for purposes of determining charges to the funding standard account.

2. Modification of credits to funding standard account

Past service liability

Under the bill, any decrease in unfunded past service liability arising from plan amendments adopted during a plan year would be amortized in equal annual installments over 30 years for purposes of determining credits to the funding standard account.

Experience gains

Under the bill, a net experience gain would be amortized in equal annual installments over 15 years for purposes of determining credits to the funding standard account.

Prior amortizable amounts

Under the bill, any amortizable amounts described above that exist on the date of enactment would continue to be amortized over their respective previously established periods.

Withdrawal liability

Under the bill, any withdrawal liability payment to a plan for a plan year would be treated as an amount contributed to the plan for the year. Accordingly, it would generate a credit to the funding standard account.

Effective date

These provisions of the bill would apply on the date of enactment.

J. Excise Taxes (Sec. 203 of the Bill and Sec. 4971 of the Code)

Present law

Under present law, an employer who maintains a plan to which the ERISA minimum funding standard applies is subject to a two-tier annual nondeductible excise tax on any accumulated funding deficiency under the plan. The initial tax is 5% of the deficiency. If the deficiency is not corrected within a correction period, an additional excise tax equal to 100% of the deficiency is imposed.

Before issuing a notice of deficiency under this provision, the Service is required to notify the Secretary of Labor and afford the Secretary of Labor an opportunity to (1) require the responsible employer to eliminate the deficiency and (2) to comment on the imposition of the tax.

Explanation of provisions

The bill would conform the penalty excise tax provisions relating to the ERISA funding standard to the plan reorganization provisions of the bill by changing the accumulated funding deficiency of a plan in reorganization (the amount to which the excise tax applies) to the reorganization deficiency computed under the bill. The bill would also provide that in the case of a multiemployer plan in reorganization, the notice issued by the Internal Revenue Service to the Secretary of Labor with respect to a notice of deficiency for a tax on an accumulated funding deficiency, and the opportunity to comment on the imposition of the tax, would be provided to the PBGC.

Effective date

These provisions of the bill would apply on the date of enactment.

Revenue effect

It is estimated that this provision would result in a negligible net decrease in budget receipts.

K. Deductibility of Employer Liability Payments (Sec. 204 of the Bill and Sec. 404 of the Code)

Present law

Under present law, an employer is allowed a deduction for a contribution to a qualified pension plan for its employees. The deduction is allowed (within limits) in the taxable year for which the contribution is made.[1] Payments of employer liability under the termination insurance program are treated as employer contributions.[2]

Explanation of provision

The bill would allow a deduction for amounts paid by a taxpayer under the employer liability provisions of the termination insurance program without regard to the usual limitations on employer deductions for contributions to a defined benefit pension plan. Special rules are provided which would allow a deduction for employer liability payments to a taxpayer whose liability for the payments arises out of the liability of an employer who is a member of the same controlled group of companies that includes the taxpayer.

Effective date

This provision of the bill would be effective upon enactment.

Revenue effect

It is estimated that this provision would decrease budget receipts by less than $5 million annually.

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[1] See Code sec. 404(a) (1) (A) and Prop. Treas. Reg. § 1.404(a)–14.
[2] See Code sec. 404(g).

L. Minimum Vesting Requirements (Secs. 205 and 303 of the Bill, Sec. 411 of the Code, and Sec. 203 of ERISA)

Present law

Under present law, benefits under a plan which are vested may be forfeited only (1) in the case of death, (2) where benefits are suspended upon reemployment, (3) in the case of certain retroactive plan amendments which reduce benefits, or (4) in the case of certain withdrawals of mandatory employee contributions. Also, under present law, with certain very limited, exceptions, all of a participant's years of service with an employer must be taken into account for vesting purposes.

Explanation of provisions

In general

The bill would permit additional circumstances under which vested benefits under a multiemployer plan, which are nonforfeitable under present law, could be forfeited. The bill would provide that certain of a participant's years of service with an employer, currently taken into account for vesting purposes, could be disregarded in the case of a multiemployer plan. (Also, see C., Employer Withdrawal Liability, *5. Reorganization, g. Adjustments in accrued benefits.*) In addition, the bill would conform the vesting provisions of ERSIA to changes made in other parts of the bill.

Cessation of contributions under a multiemployer plan

Under the bill, a multiemployer plan would not fail to meet the vesting requirements of ERISA merely because the plan provides for the forfeiture of accrued benefits attributable to service with a participant's employer before the employer was required to contribute to the plan in the event that the employer ceases making contributions to the plan.

Reduction and suspension of benefits

Under the bill, a multiemployer plan would not fail to meet the vesting requirements of ERISA merely because (1) it is amended to reduce accrued benefits, but not below the level of guaranteed benefits, in the event of plan reorganization or plan termination, or (2) benefits payments under the plan, other than basic benefits, are suspended in the event of plan reorganization or plan termination.

Authority to disregard service after withdrawal or plan termination

Under the bill, if an employer withdraws from a multiemployer plan, a participant's years of service with the employer completed after the withdrawal would not have to be taken into account in determining the participant's vested percentage in his accrued benefits under the plan. This rule would apply to partial withdrawals only to

the extent permitted in regulations prescribed by the Secretary of the Treasury.

Also, under the bill, if a multiemployer plan terminates for purposes of termination insurance, an employee's years of service completed after the date of termination would not have to be taken into account in determining a participant's vested percentage in his accrued benefits under the plan.

Effective date

This provision of the bill would apply on date of enactment.

Revenue effect

It is estimated that this provision will have no effect on budget receipts.

APPENDIX:

SUMMARY OF TESTIMONY ON H.R. 3904

Testimony was received on H.R. 3904 (as amended by the Education and Labor Committee) from Administration, Congressional and public witnesses before the Committee on Ways and Means on February 19, 1980. Statements were also submitted for the record. The following is a summary of the public testimony and the statements for the record. This summary was prepared primarily by Carmen D. Solomon, Analyst, Education and Public Welfare Division, Congressional Research Service, Library of Congress.

Hon. Robert E. Nagle, Executive Director, Pension Benefit Guaranty Corporation

States that the program provided for in H.R. 3904 is the result of comprehensive studies by the Pension Benefit Guaranty Corporation (PBGC) and extensive consultations with all facets of the multiemployer plan universe, and reflects a broad labor-management consensus on the best way to solve the problems of multiemployer plans.

Contends that:

> H.R. 3904 eliminates features of current law that would create incentives for employers to leave a multiemployer plan. Instead, the new bill would impose liability on those employers that withdraw, and protect those that remain. Plans would be further strengthened by tighter funding rules. New provisions would make it possible to keep plans going in situations where they would terminate under current law—for example, in declining industries where the number of active employees is shrinking. The risks inherent in multiemployer plans would be apportioned so that plan continuation would be in the interest of employers—to avoid potentially higher liability—and participants—to avoid benefit reductions because of lowered guarantees. Termination insurance would be provided only for involuntary events—plan insolvencies resulting from sustained declines in covered employment.

Hon. Daniel I. Halperin, Deputy Assistant Secretary of the Treasury (Tax Legislation)

Indicates a need to avoid pressures on defined benefit plans to shift to defined contribution plans which the Treasury Department believes provide less certainty and protection for employees. States that multiemployer plans need to be able to attract new employers as well as retain their present membership. Indicates that the prospect of employer liability under provisions of current law may endanger this ability, particularly if the amount of risk cannot be foreseen. Points out that the limit of liability to 30 percent of net worth combined with guarantee levels above the general level of benefits may create a powerful incentive to terminate multiemployer plans, thus, unduly burdening the guarantee fund.

Contends that H.R. 3904 is well designed to encourage the continuation of multiemployer plans while providing maximum feasible protection for both employees and the guarantee fund. Believes that the legislation deserves prompt enactment.

Robert Kryvicky, Assistant Director, Social Security Department, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)

Believes that H.R. 3904 will generally tend to strengthen multiemployer plans. Asks Congressional action on the issue by May to end the uncertainty that exists on both sides of the bargaining table.

Proposes that H.R. 3904 provide that the unfunded liabilities existing on the effective date of the legislation be allocated among employers participating in the plan on that date. Employers planning to join the plan after that date would be responsible only for the unfunded liabilities they bring in. Maintains that this proposal would solve the problem of "inherited unfunded liabilities."

Opposes a reduction in benefit guarantees. However, feels that if Congress reduces the guarantees below levels offered single employer plans, the least it can do is to allow well-funded plans the opportunity to purchase additional coverage.

Theodore R. Groom, Counsel for the Western Conference of Teamsters Pension Trust Fund

Supports H.R. 3904 as adopted by the House Education and Labor Committee, and urges that no major revisions be made in its basic structure.

Believes it is imperative that H.R. 3904 be adopted prior to May 1, 1980, because (1) further deferral of mandatory coverage is not politically feasible; (2) further delay may initiate mass withdrawals of employers from multiemployer plans; and (3) the adoption of mandatory coverage of multiemployer plans under the structure of current law would impose such huge costs on the system and the plans that it could mean the demise of Taft-Hartley plans.

Robert A. Georgine, Chairman, National Coordinating Committee for Multiemployer Plans

Supports H.R. 3904 and recommends its prompt enactment. Believes that H.R. 3904 will help assure the continued existence and health of the multiemployer plan system.

States that the bill will eliminate the potentially disastrous "last man out" problem because withdrawing employers will be responsible for a share of the plan's unfunded liabilities and thus the incentive to withdraw in order to avoid such responsibility will be eliminated. Believes that a guarantee of less than 100 percent keeps the cost of the guarantee system at an affordable level in addition to keeping the worker and his bargaining representatives vitally interested in both continuance of the plan and responsible funding of the plan's benefit obligations.

Donald Seifman, Counsel, and Arnold Mayer, Director of Government Affairs, United Food and Commercial Workers International Union

Supports H.R. 3904; in certain areas, suggests possible modifications to the bill.

Favors a voluntary industry-wide supplemental insurance fund to cover uncollectible withdrawal liabilities. Wants "labor dispute" defined more fully. In the case of corporate reorganizations, suggests that the predecessor be primarily liable and the successor secondarily liable.

States that pursuant to proposed ERISA section 4201(h)(1) there is a reduction in withdrawal liability in the event liabilities are transferred to another plan. Believes that a transfer to a profit-sharing plan or money purchase plan should not receive the benefit of this provision.

Recommends a guarantee level that is equivalent to the single employer guarantee. With regard to the 5-year phase-in of guarantees, suggests that the time for measurement begin with the date the collective bargaining agreement is executed.

States that a mandatory requirement that a risk-related premium be developed (for at least a portion of the premium to be paid to PBGC) would be very helpful and would be a reward for those multiemployer plan trustees who are doing their job well.

M. M. Stewart, Chairman, Pension Committee, Master Contracting Stevedore Association of the Pacific Coast, Inc.

Proposes that (1) "employer" be redefined to cover indirect employers in the longshore industry and (2) the presumptive rule under ERISA section 4023 be made inapplicable to the Pacific Maritime Association-International Longshoreman's and Warehouseman's Union (PMA–ILWU) pension plan. The presumptive rule would in effect allocate all pre-1979 unfunded obligations on the basis of each employer's fractional share of contributions to the pension plan the last 5 plan-years before February 27, 1979.

Frank Cummings, Counsel, Food Marketing Institute

The Food Marketing Institute, in conjunction with the United Food and Commercial Workers, makes eight proposals for modifying H.R. 3904:

(1) A provision in H.R. 3904 that permits a national group of plans in a single industry to voluntarily form a Reinsurance Fund for Unattributable Withdrawal Liability ("Industry Fund" or "IF"). "IF" would be funded by premiums, perhaps experience-rated, payable annually by members on a perparticipant basis. Employers contributing to any fund which is a member of an IF would not owe or pay these unattributable liabilities. Their premiums to the IF would cover the cost.

(2) 15-year cap on withdrawal liability.

(3) If there is no actuarial impact on the plan, there will be no withdrawal liability.

(4) More stringent mandatory penalties for unjustified failure to make timely payments of withdrawal liability.

(5) Modify H.R. 3904's partition provision—

(a) to partition a portion of unattributable liabilities (not merely those traceable to employees of the insolvent employer), and

(b) to allow partition without resort to Federal courts and whenever a non-de minimis contributor becomes insolvent.

(6) When an employer newly enters a plan on a past-service basis, then the employer should, to that extent, be subject to a share of withdrawal liability just as if that past service had been accrued under the plan all along.

(7) H.R. 3904 should be amended to provide that a contributing employer or the union may initiate a proceeding before the PBGC in cases where the plan administrator does not act to protect the interests of the plan and its contributors by making use of the provisions in H.R. 3904.

(8) Inclusion of tax deduction carry-back provision of lump-sum withdrawal liability payments for employers who have gone out of business.

Harrison Givens, Jr. (Vice President, Equitable Life Assurance Society of New York), ERISA Industry Committee (ERIC)

Generally supports the principles underlying H.R. 3904. States that the fundamental principle in H.R. 3904 is that the program for guaranteeing the benefits of multiemployer plans must have realistic prospects for sound, sustained operation within the multiemployer universe. Indicates that there should be no concept, explicit or implied, of turning to other constituencies for financial subsidy, whether they be single employer plans, or defined contribution plans, or welfare plans, or, ultimately, general tax revenues.

With regard to Amendment 8, offered jointly by Representatives Thompson and Erlenborn, which appears to alow certain multiemployer plans to elect guarantees broader than would be standard for multiemployer plans, at an appropriate higher premium, believes that it is important to stress that any such mechanisms for broadened coverage should be provided within the multiemployer universe, and plans electing such coverage should remain subject to the regular multiemployer rules as to standard coverage. Indicates that this is necessary to preclude potential spillover of costs to the single-employer system.

Emphasizes that the bill's concept of having the multiemployer plan remain contingently liable for 5 years for the liabilities spun off is a sound protection, and the burden of proof for removing that contingent liability should rest with the multiemployer plan.

Paul H. Jackson (Actuary, Wyatt Company), National Small Business Association

Indicates that H.R. 3904 is not a bill which is sponsored by small business. States that it has not been drafted with the advice of small business, nor has the support of small business been sought.

Contends that the net result of H.R. 3904 is that it imposes a substantial burden on employers who have been in multiemployer plans that extend into periods when they are not participating in those plans.

Urges that H.R. 3904 be amended so that it would (1) continue to restrict any withdrawal to substantial employers who contribute more than 10 percent of the total plan costs, and (2) continue to limit any company's liability to 30 percent of its net worth.

Richard E. Kent, Esq., Vice President and General Counsel, Evans Products Company (Portland, Oregon)

Supports the basic objectives underlying H.R. 3904. Indicates however, that the retroactive imposition of withdrawal liability, in some

cases, could have disastrous consequences for withdrawing employers who were not at all responsible for funding deficiencies.

Suggests that H.R. 3904 be amended to permit an alternative liability computation in the event of a total or partial withdrawal by a contributing employer who is not a substantial employer (as defined under current law), during any plan year up to and including the plan year in which the bill is enacted. The intention being that the withdrawing employer will not, prior to the time Congress has acted, be penalized by having to carry the burden of liabilities attributable to the employees of others.

Seymour Hayman, Vice Chairman, Dellwood Foods, Inc. (Yonkers, New York)

Believes that H.R. 3904, as adopted by the Committee on Education and Labor, still adversely affects multiemployer plans in declining industries and may unnecessarily accelerate their further decline. Maintains that employers in multiemployer plans should not be liable for pre-ERISA unfunded liabilities, especially with regard to employers in declining industries.

Support the financial assistance provisions of H.R. 3904. Believes, however, that such assistance, consisting simply of loans to enable the plan to meet basic benefit payments during periods of insolvency, would not help restore the plan to good health or serve to correct its basic problems.

Recommends that if appropriate relief provisions for declining industry funds cannot be agreed on at this time, at the very least, consideration should be given to delaying application of H.R. 3904 to the milk industry funds for a year, so that the issues involved can be studied further.

John W. Prager, Jr., Counsel, Associated Builders and Contractors, Inc.

Contends that the withdrawal provisions of H.R. 3904, as presently drafted, will have wide-ranging adverse effects upon the Association's members, their employees, and the construction industry employers in general. Recommends the following:

(1) "single-employer" be defined in H.R. 3904 according to Federal labor law rules, so that financial liability will not be imposed upon the non-union entity of a "double-breasted" employer (double-breasted employer is an employer who operates both unionized and nonunion construction firms).

(2) ERISA section 4201 be modified either to cover only "voluntary" employer withdrawls or to specifically exclude withdrawal occasioned by either union conduct or employee decertification.

(3) revision of the 5-year resumption of work provisions in accordance with applicable labor-management relations law.

(4) ERISA section 4201(c)(6) be modified to define "token and insubstantial" as 5 percent of the work volume of the employer.

(5) the bill include a maximum 30 percent of net worth cap on employer withdrawal liability.

Richard J. Gruenwald, President, National Construction Employers Council (NCEC)

Believes that there are two areas in which improvements can be made in H.R. 3904.

The first suggested improvement relates to actuarial assumptions. NCEC recommends that provision be made in H.R. 3904 to insure that realism be required in setting benefit levels, basing them on sound and conservative actuarial assumptions. Further, that legislative history and regulations provide specific guidance to actuaries and trustees as to the requirements which should be met to assure the adoption of realistic assumptions on all key factors important to a multiemployer plan.

The second suggested improvement relates to the merger and transfer provisions in H.R. 3904. Recommends that language be included in H.R. 3904 to include situations in which local unions spin off from multi-local plans and form a new plan to cover only the members of their particular local union. States that the problem arises because the employer is subject to future potential penalties. Believes it is important that there be equitable allocation of assets and liabilities in these situations.

Frank J. White, Jr., President, Associated General Contractors of Connecticut, Inc.

Opposes H.R. 3904. Concludes that H.R. 3904 is unfair and inequitable and should not be adopted. Contends that the effective date for mandatory coverage of multiemployer plans under title IV should be extended to January 1, 1981, to permit equitable resolution of the title IV dilemma, and the PBGC should be requested to develop an alternative proposal for pension benefit protection which does not require that employers underwrite the program.

Maintains that H.R. 3904 will destroy the integrity of collective bargaining by imposing on employers the obligation to pay more in contributions to fund an inadequately funded pension plan, suffer an excise tax for their failure to pay more in contributions, or pay all "benefit entitlements" upon termination.

Indicates that the term "benefit entitlements" is unclear and that the new definition of sponsor is inappropriate.

Abe Rosenthal, Executive Vice President, Minnesota Transport Services Association

Opposes H.R. 3904. States that passage of ERISA in 1974 has accorded a "defined benefit" status to their local pension plans that was never contemplated nor negotiated by their employers.

Contends that the "unfunded liability" (including "inherited unfunded liabilities") concept of ERISA and H.R. 3904 will have catastrophic effects on their members' ability to finance their operations because each plan will be required to determine its assets, liabilities, and the unfunded liabilities of each participating employer and publish that information each year in its plan report. Feels that this requirement may seriously affect members' ability to get financial assistance from their banks.

Suggests that the need for employers in multiemployer plans to be liable for "inherited liabilities" be eliminated.

Believes that the collective bargaining process should be able to establish contribution levels on their pension plans and have the right to terminate or change their plans through the collective bargaining process.

Jack M. Hacking, Assistant Legislative Counsel, National Retired Teachers Association/American Association of Retired Persons

Points out that H.R. 3904 allows for reductions of retiree's benefits for plans that are in trouble, but does not allow for a retiree voice in the decisions that directly affect them.

States that if a plan does have financial problems, it is the collective bargaining process that begins the formulation of benefit reduction decisions—a process in which the retiree has absolutely no clout.

Believes that the benefit reduction procedures in H.R. 3904, as provided by the reorganization, insolvency, and guarantee section unfairly concentrate the risk of loss on the retiree.

Lawrence M. Franklin, Benefit Consultant, George B. Buck Consulting Actuaries, Inc. (New York, N.Y.)

Maintains that if termination insurance is to work for the private system, then it must be paid for by the private system. Thus, supports financing termination insurance through premiums paid by privately sponsored pension plans, rather than through general revenues.

Expresses concern that H.R. 3904, as amended by the Committee on Education and Labor, provides for an election by certain multiemployer plans to be covered under the single employer programs, rather than the multiemployer program. Does not think that the multiemployer program would be financially sound if this provision remains in the bill. Comments that a curious feature of the election provision is that it would be able to be exercised only by the better-funded multiemployer plans. The net effect of this possibly would be an insurance program consisting of a preponderance of the more poorly funded (and presumably more risky) multiemployer plans. States that this would violate the fundamental actuarial principle that insurance pools of high risk groups are not self-sustaining.

Indicates that excluding the election provision, the bill appears worthy of enactment. With such provision, however, urges defeat of the bill.

Wayne Jett, Attorney (Los Angeles, California)

Opposes adoption of H.R. 3904. Contends that it would not improve the detrimental impact of title IV on multiemployer pension trusts. Maintains that the legislation would substantially enlarge the financial obligation of the multiemployer plan system without a commensurate increase in the financial base of the system.

Also, asserts that H.R. 3904 would have very detrimental effects on the processes and rights of the parties in collective bargaining, as well as upon the ability of trustees to perform their duties as independent fiduciaries in the proper administration of multiemployer pension plans.

Believes that the greatest stability and security for pension benefits provided by multiemployer pension plans can be achieved by exempting such plans from coverage under title IV of ERISA.

Hon. John N. Erlenborn, Member of Congress (Illinois)

States that he is not in favor of multiemployer termination insurance because:

(1) plan termination insurance changes the basic legal structure of multiemployer plans, thus infringing on the freedom of the collective bargaining process to permit the balancing of benefits and contribution income;

(2) plan termination insurance is really an income transfer program that soaks the well-managed, more stable, well-funded funds in order to pay for the unstable, underfunded ones;

(3) program costs are based on insufficient plan funding which can stem from the loss of plan assets due to market fluctuations, manipulation, and fiduciary abuse as well;

(4) inestimable program costs and employer liability create inequities and fear which serve to undermine the growth and expansion of the private pension system; and

(5) as premiums rise, there will be pressure for general revenue financing.

Indicates that he will propose an amendment to exempt multiemployer plans from coverage under title IV of ERISA in the House debate on H.R. 3904.

Suggests the following modifications for the bill:

(1) Basic level of guarantees should be scaled back.

(2) Past sacrifice benefits for active participants which are related to years of service with an employer before the employer joined the multiemployer plan should be excluded from the benefit guarantee.

(3) The guarantee for benefits payable before age 65 should be actuarially reduced.

(4) The guarantee of future increases in pre-ERISA accrued benefits should be scaled back.

Believes that the following suggestions could reduce or even eliminate the future chance of plan termination:

(1) Benefit guarantees related to mass withdrawal plan terminations should be reduced.

(2) In the event of mass withdrawal terminations, disincentives should exist so that the unions and employer cannot turn around and establish a new tax-qualified pension plan.

(3) Utilize excise tax penalties in connection with employer withdrawal liability to ensure that such payments are made on a timely basis.

(4) Shorten the funding period to 20 years with respect to future increases in past service liabilities for both single and multiemployer plans.

Points out that he would not vote for H.R. 3904 if H.R. 6151 (which would eliminate employer liability and permit the use of general revenues in the event of the termination of the 1950 UMW plan due to massive employer withdrawals) is included as an amendment to the bill.

Hon. Thomas E. Petri, Member of Congress (Wisconsin)

Recommends that the Committee augment the protection afforded workers in H.R. 3904 by adding a provision allowing workers to take additional measures on their own to further protect their future income security, if they so wish. Suggests a provision allowing supple-

mentary Individual Retirement Accounts, IRAs, for all workers who are participants in tax-qualified retirement programs.

Believes that H.R. 3904 is the perfect place for the supplementary IRA idea because it clearly advances the central purpose of the bill.

Richard E. Hall (President of the Underground Construction Company), Associated General Contratcors of America (AGC)

Believes that it is totally unfair to construction employers to make them responsible for any liabilities beyond the contributions negotiated for their employees in collective bargaining agreements.

Points out that general contractors differ from other construction and non-construction employers in that they generally contribute to many multiemployer pension plans and therefore have a far greater exposure to liability.

Expresses concern that undue pressure may be brought by employee representatives on employers or trustees that would result in the triggering of plan termination under any one of the three tests for termination as provided in ERISA section 4041A. Urges the adoption of consistent employer obligations upon plan termination and believes that the termination provisions should also offer employers protection from any form of liability in instances where, as a result of a collective bargaining impasse, no new agreement is consummated.

Proposes the return to guaranteed benefits, and not vested benefits, as the basis for employer liability under H.R. 3904, ERISA section 4201(e). Recommends that specific guidelines with regard to partial withdrawal be included for the benefit of the PBGC, and that a realistic cap on employer liability be developed.

Believes that plan administrators should annually communicate to employers the level of each plan's unfunded vested liability as well as each employer participant's proportional share of unfunded vested liability. Suggests that the definition of plan sponsor clearly indicate that the sponsor does not assume the fiduciary responsibilities within the meaning of title I, part 4. Believes that H.R. 3904 should preclude liability for benefits accrued prior to the enactment of ERISA.

Harold R. Bassen, Attorney, Allied Building Metal Industries, Inc.

Opposes H.R. 3904, with respect to employer contingent liability to multiemployer pension plans. Contends that H.R. 3904 cannot work because—

(1) Does not believe that small businesses have the financial resources to pay withdrawal liability of the magnitude involved in a pro rata share of unfunded vested liabilities.

(2) Considers it is absurd to expect an employer, when his financial condition is at its lowest point, to liquidate his share of the unfunded vested liabilities at a rate twice as fast as when he was in business and had some money.

(3) Does not believe it would be possible for trustees to collect huge sums that employers did not agree to pay even though a statute would declare liability, when as it is, the most difficult responsibility of trustees has been to collect delinquent contributions, which are contributions which employers agreed to pay. Further, asserts that the cost of trying to collect withdrawal lia-

bility would not be worth the expense because in most cases the employers involved would have no appreciable assets.

(4) Believes that passage of H.R. 3904 could lead to lawsuits by contributing employers against trustees.

States that PBGC has estimated a cost of $80.00 per participant per year to make the multiemployer pension fund viable. Proposes that instead of H.R. 3904, Congress enact the following:

(1) Increase the insurance premium to $80.00 per participant per year.

(2) Require that employers increase contributions to the pension funds to reimburse the plans by the cost of the $80.00 premium.

Example:

Fund A: The total number of participants was 4,208. The initial insurance premium for 1 year would be $336,640 (4,208 x $80). The total number of hours on which regular contributions were made was 1,957,268. The special increased contribution to this fund would be .172 cent per hour ($336,640 divided by 1,957,268).

(3) Establish a regulatory agency whose approval would be required for increases or decreases in pension benefits.

Believes that the major impracticality of H.R. 3904 is the effect on small employers because it places a liability on them which is too large. Asserts that in most cases it equals or exceeds the value of their business enterprises and they have no control over the events which could trigger demand for payment. Is of the opinion that all employers in any industry group, regardless of the financial condition of that group's pension plan, would rather pay a small uniform increased contribution within that group than face the prospect of individual employer liability of staggering proportions.

Trustees of the Hotel and Restaurant Employees and Partenders International Union Health and Welfare and Pension Funds

Believes that H.R. 3904 is a major improvement over the current law and supports its enactment with the modifications proposed by the National Coordinating Committee for Multiemployer Plans.

Robert H. Shertz, General Counsel, Local and Short Haul Carriers National Conference

Does not see any reason why an employer who happens to be required to contribute to a multiemployer fund because of a labor contract should be charged with any "inherited liability." States that if there is a social reason for funding this liability it should be a general revenue obligation.

Contends that not only will the assertion of such liability require an unfair payment by a withdrawing or terminating employer, but it would also make it impossible for small carriers to sell their business since a purchaser will be required to assume the seller's inherited liability. Indicates that in some cases the extent of the inherited liability could be in excess of the net worth of the withdrawing carrier.

Suggests, as a second-best solution, that the Committee consider a tax credit. Claims that this would not only take the sting out of the

payment of inherited liabilities but also remove the impediment to selling and buying small businesses. Also, requests that consideration be given to some guidelines which would permit Teamster Western Conference and Central States Funds to qualify as self-insurers.

Thomas V. Hirschberg, Vice President-Insurance, Sperry Corporation

Opposes the Education and Labor Committee amendment which states that the multiemployer plan can make an irrevocable election to opt into the single employer insurance program. Believes that the change is essentially unsound because:

(1) It *would* undermine the multiemployer insurance program, by leaving in that program only the high risk, poorly funded plans and plans in declining industries;

(2) It could produce a higher single employer plan premium rate in order to pay for the residual obligations of a former multiemployer plan employer who becomes insolvent; and

(3) It *would* lead to a unified termination insurance program for both multiemployer and single employer plans (contrary to the intent of Congress in enacting ERISA) because the residual multiemployer plan could not be sustained.

Concludes that unless the provision allowing multi-employer plans to elect coverage under the single employer program is deleted, H.R. 3904 is not the right solution for the correction of the inadequate funding (or the methods thereof) of multi-employer plans prior to the enactment of ERISA.

Donald C. Vaillancourt, Vice President, Corporate Communications and Consumer Affairs, The Grand Union Co. (Elmwood Park N.J.)

Urges favorable consideration of testimony of the Food Marketing Institute.

Karen W. Ferguson, Director, Pension Rights Center

Opposes H.R. 3904, contends that it proposes to take benefits away from retirees. States the bill requires the employers and unions sponsoring plans in financial trouble to cut pension benefits back to levels in effect five years earlier. Claims that the benefit reductions will have a devastating effect on current retirees.

Maintains that a more effective disincentive to unrealistic promises would be more stringent funding standards for benefit increases. Indicates that the withdrawal liability imposed by H.R. 3904 imposes a substantial disincentive to unrealistic benefit increases.

Asserts that even if PBGC did not have sufficient funds to pay the benefits guaranteed by title IV there would be a number of alternatives preferable to reducing benefits. Comments that it may be a good investment for the Treasury to make short-term loans to PBGC since the greatest liabilities are likely to be for pre-ERISA service and the number of participants with extensive periods of such service will substantially diminish over time. Suggests payments from general revenues for pre-ERISA liabilities of insolvent plans as another possible source. Indicates that another way of raising additional revenue for PBGC, if in fact it is needed, is to raise premiums even further.

Suggests that if cutbacks cannot be avoided, they should only be applied to individuals fully represented in the collective bargaining process. Comments that if PBGC had proposed that it assume the liability of bankrupt employers as a contingent liability, to be paid only if the plan had insufficient assets to pay benefits, one could better believe that PBGC was more concerned with protecting participants rather than its assets.

With regard to H.R. 3904's special construction industry withdrawal liability rules, suggests the idea of industry self-insurance.